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SESSION 1932

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 41, AN ACT TO AMEND

THE BANKRUPTCY ACT

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

TUESDAY, APRIL 12, 1932

WEDNESDAY, APRIL 13, 1932

WITNESSES:

Mr. H. P. Grundy, representing the Canadian Credit Men's Trust Association, Winnipeg; and Mr. G. T. Clarkson, Toronto, representing E. R. C. Clarkson & Sons, the Toronto Board of Trade and the Dominion Association of Chartered Accountants.

Appendix at End of Record.

OTTAWA
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1932

MEMBERS OF THE COMMITTEE

Mr. JOHN T. HACKETT, *Chairman*

Mr. Finlay MacDonald,
Mr. A. D. Ganong,
Mr. Samuel Gobeil,
Mr. A. J. Anderson,
Mr. David Spence,
Mr. W. W. Kennedy,
Mr. F. W. Turnbull,
Mr. E. E. Perley,
Mr. J. A. Fraser,
Mr. Harry Butcher,
Hon. J. C. Elliott,
Mr. Samuel Jacobs,
Hon. Ernest Lapointe,
Hon. Ian A. Mackenzie,
Hon. J. L. Ralston,
Mr. Alfred Speakman,
Mr. A. M. Carmichael.

R. ARSENAULT,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,
TUESDAY, April 5, 1932.

Resolved,—That Bill No. 41, an Act to amend the Bankruptcy Act, be referred to a Special Committee of 17 Members to be appointed hereafter.

Attest

ARTHUR BEAUCHESNE,
Clerk of the House.

WEDNESDAY, April 6, 1932.

Ordered,—That Messrs. Hackett, MacDonald (*Cape Breton South*), Ganong, Gobeil, Anderson (*Toronto-High Park*), Spence, Kennedy (*Winnipeg South Centre*), Turnbull, Perley (*Qu'Appelle*), Fraser (*Cariboo*), Butcher, Elliott, Jacobs, Lapointe, Mackenzie (*Vancouver Centre*), Ralston, Speakman, and Carmichael, be a Special Committee to consider and report upon Bill No. 41, An Act to amend the Bankruptcy Act; and that Standing Order 65 be suspended in relation thereto.

Attest

ARTHUR BEAUCHESNE,
Clerk of the House.

TUESDAY, April 12, 1932.

Ordered,—That the said Committee be given leave to print from day to day, as required, the minutes of proceedings and evidence taken, and also such papers and documents as may be directed by the said Committee to be printed for the use of the Committee and Members of the House, and that Standing Order 64 be suspended in relation thereto.

That the said Committee be given leave to sit while the House is in session.

Attest

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORTS OF THE COMMITTEE

FIRST REPORT

TUESDAY, April 12, 1932.

The Special Committee appointed to consider Bill No. 41, An Act to amend the Bankruptcy Act, have the honour to present the following as their First Report:

Your Committee recommend that they be given leave to print from day to day, as required, the minutes of proceedings and evidence taken, and also such papers and documents as may be directed by the Committee to be printed for the use of the Committee and Members of the House, and that Standing Order 64 be suspended in relation thereto.

Your Committee also recommend that they be given leave to sit while the House is in session.

All of which is respectfully submitted.

JOHN T. HACKETT,
Chairman.

MINUTES OF PROCEEDINGS

COMMITTEE ROOM 268,

TUESDAY, April 12, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, held their first meeting this day, at 10.30 a.m.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Ganong, Gobeil, Anderson (*Toronto-High Park*), Kennedy (*Winnipeg South Centre*), Turnbull, Perley (*Qu'Appelle*), Fraser (*Cariboo*), Butcher, Elliott, Lapointe, Ralston, Speakman, Carmichael, 15.

In Attendance: Mr. F. P. Varcoe, Counsel in the Department of Justice, and Messrs. H. P. Grundy, Henry Detchon, and A. S. Crighton, representing the Canadian Credit Men's Trust Association, Winnipeg.

On motion of Messrs. Gobeil and Anderson, Mr. Hackett was elected Chairman of the Committee.

The Chairman, having read the Order of Reference, explained briefly the purport of the Bill referred to the Committee and suggested that a Sub-Committee of three be appointed to act with him and advise as to the conduct of the business of the Committee. This having met with the unanimous approval of the Committee, the following Members were asked to constitute said Sub-Committee: Messrs. Lapointe, MacDonald and Speakman.

With respect to the reporting and printing of evidence, the Chairman and the Chief Clerk of Committees and Private Bills drew the attention of the Committee to the scarcity of Reporters as well as to the large number of other Committees requiring the attendance of the official Reporters. However, considering the importance of the matters to be dealt with, the Members of the Committee were unanimously in favour of having such evidence as may be deemed necessary, reported and printed. It was therefore resolved, on motion of Messrs. Lapointe and Turnbull;

That the Committee report to the House recommending that they be given leave to print, from day to day, as required, the minutes of proceedings and evidence taken, and also such papers and documents as may be directed by the Committee to be printed for the use of the Committee and Members of the House, and that Standing Order 64 be suspended in relation thereto.

On motion of Messrs. Fraser and Ganong, it was also agreed that the Committee report to the House recommending that they be given leave to sit while the House is in session.

The Clerk of the Committee was instructed by the Chairman, at the request of the Members of the Committee, to obtain copies of the Bankruptcy Act, chapter 11, R.S. 1927, for the use of the Committee members during the enquiry which is now proceeding.

The Committee then adjourned until Wednesday, April 13, at 2 p.m.

R. ARSENAULT,
Clerk of the Committee.

COMMITTEE ROOM 268,

WEDNESDAY, April 13, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met at 2 p.m., Mr. Hackett, the Chairman, presiding.

Members present: Messieurs Hackett, MacDonald (*Cape Breton*), Anderson (*Toronto-High Park*), Spence, Kennedy (*Winnipeg South Centre*), Turnbull, Perley (*Qu'Appelle*), Fraser (*Cariboo*), Butcher, Elliott, Lapointe, Speakman, Carmichael, 14.

In attendance: Mr. F. P. Varcoe, Counsel in the Department of Justice; Messrs. H. P. Grundy, Henry Detchon and A. S. Crighton, representing the Canadian Credit Men's Trust Association, Winnipeg; and Mr. G. T. Clarkson, Toronto, representing the Toronto Board of Trade, the Dominion Association of Chartered Accountants, and E. R. C. Clarkson & Sons, Trustees, Receivers, Liquidators.

The Chairman reported that the Sub-Committee appointed during the proceedings of Tuesday, April 12, had agreed upon the following dates for the next meetings of the Committee: Thursday, April 14, 3.30 p.m.; Friday, April 15, 10.30 a.m.; Tuesday, April 19, 10.30 a.m.; also upon some of the witnesses to be given an opportunity to appear before the Committee on those dates.

Mr. Grundy being called, submitted the views of his clients with respect to the Bill referred to the Committee. Seven proposed amendments submitted by Mr. Grundy on behalf of his clients were filed and ordered to be printed as an appendix to the record of the day's proceedings. Witness also supplied the Clerk, for the benefit of Members of the Committee, with four copies of a booklet entitled "Strengthening of Procedure in the Judicial System," and embodying a Report of the Attorney General of the United States on Bankruptcy Law and Practice.

Witness retired.

Mr. Clarkson was called and submitted his views on the present Bankruptcy Act and on the proposed amendments thereto, and retired.

It being four o'clock, the Committee adjourned to meet again to-morrow, Thursday, at 3.30 p.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 268,

APRIL 13, 1932.

The Special Committee on Bill No. 41, an Act to amend the Bankruptcy Act, met Wednesday, April 13, at 2 o'clock, Mr. Hackett, presiding.

The CHAIRMAN: Gentlemen, if the Committee will come to order we will proceed. Your sub-committee met for a few minutes yesterday afternoon and decided that the witnesses would be asked to speak to certain headings which will be given to each witness. This will facilitate the determination in the first place of what should be taken down in shorthand and, in the second place, it will maintain some order and sequence in the testimony of the different witnesses. Mr. Varcoe of the Department of Justice, who drafted the Bill, was asked to be here to explain in a general way the purpose of the legislation. It was decided by the Committee to meet to-day at 2 o'clock, to-morrow at 3.30, Friday at 10.30 and on Tuesday at 10.30. The Committee has been authorized to hold sittings while the House is in session. Mr. Grundy, from Winnipeg, has been very much interested in bankruptcy and has prepared a valuable statement on abuses and suggested legislation to remedy them. He was one of a committee of the Canadian Bar Association which, I think, was presided over by the president of that body, Mr. Louis St. Laurent, of Quebec. I think as a preliminary to our work it would be of assistance to the Committee to have a general statement from Mr. Grundy. He has come a long way to help us, and it is only fair that we should hear him as soon as we can. I think his statement would be a very useful preface to our labours.

H. P. GRUNDY called.

Mr. GRUNDY: Mr. Chairman and gentlemen, it is quite true that I was a member of the Bankruptcy Committee of the Canadian Bar Association. I think, possibly, I was appointed on the committee for the purpose of representing the western provinces in connection with this very important program of legislation. I am not here to-day in that capacity. I am here representing the Canadian Credit Men's Trust Association, as their solicitor. I might say that as a member of the Bankruptcy Committee of the Canadian Bar Association I realized the fact that the agitation for the proposed amendment to the Act originally occurred in the province of Quebec, and I am informed that the subject was taken up by the members of the Bar in the city of Montreal and that at the request of the members of the Bar, Mr. Nantel, K.C., made inquiries into the subject and gave to the Bar of the city of Montreal a very comprehensive report on the abuses which were occurring under the Act and made certain recommendations for the reform of the Act. I also understand that after that report had been received the members of the Montreal Bar, or the council thereof—I do not know which—instructed Mr. Leon Farbeau, K.C., to prepare draft amendments. Those, I know, were considered by either the council of the Montreal Bar or by the members of the Bar themselves, and it appeared to them that as this subject affected the whole of Canada it should be referred to the Canadian Bar Association; and on a resolution of one of the Montreal

members of the Bar at the annual meeting of the Canadian Bar Association in the year 1930, a resolution was passed appointing a committee of the Canadian Bar Association to look into the matter. This committee was appointed and did a great deal of work. Their conclusions were arrived at and submitted to the annual meeting of the Canadian Bar Association held at the Manor Richelieu in September, 1931, and I think on the motion of Mr. Sam Jacobs, K.C., a resolution was passed that before submitting the report and recommendations of the committee to the Minister of Justice, all classes, commercial and financial interests in Canada who were affected by this legislation should be sent a copy of the report. As a result nearly 5,000 copies of the proposed amendments drafted by the committee of the Canadian Bar Association were printed and circulated and a copy sent to each member of the Canadian Bar Association, and many copies were sent throughout Canada to the Boards of Trade and financial and commercial institutions. My clients, the Canadian Credit Men's Trust Association received about 2,000 copies, I think, and distributed them to the various wholesale houses who are members of the Association.

Hon. Mr. LAPOINTE: Was the report submitted to any agricultural body?

The WITNESS: I do not know whether it was or not, sir. It was sent to the Boards of Trade. I do not think so. I might say that in representing the Canadian Credit Men's Trust Association I am not representing them in their capacity as a bankruptcy trustee but in their capacity as an association of wholesale houses. Nearly every wholesale house in Canada is a member of the Association and there are a great many manufacturers associated with us. This class is the class that is chiefly affected by bankruptcy legislation, of course. I do not propose to deal with each section of the Act unless you ask me to do so. I think the crucial part of the Act is that part relating to the appointment of a superintendent of bankruptcy and licensing of trustees. In that connection I may say that from my experience in bankruptcy practice in the four western provinces—and I have had considerable experience for many years—that I do not consider the appointment of a superintendent of bankruptcy and licensing of trustees is requested or necessary so far as western interests are concerned. There are very few abuses under the Act in the administration of the Act in the west. The trustees who are practising there are all responsible and experienced and with proper staffs are giving good service, and it is only an occasional estate that an inexperienced or incompetent trustee gets appointed to, and in my opinon, it is not worth while introducing legislation to correct just minor abuses. So far as we in the west are concerned, I do not consider that these amendments are necessary so far as the appointment of a superintendent is concerned.

By the Chairman:

Q. When you speak of the west, Mr. Grundy, do you restrict your remarks to Manitoba, or do you mean everything west of the Great Lakes?—A. Manitoba, Saskatchewan, Alberta and British Columbia. I have had practice in all these provinces and experience in all these provinces.

Q. Do you wish the committee to understand that you are expressing the opinion of a substantial body of business interests when you make that statement?—A. Yes, Mr. Chairman. The Canadian Credit Men's Trust Association have branches in every province. As I have already explained they received 2,000 copies. They have a board of governors in each province. They have a legislation committee in each province. This committee on the board of governors and the members were all asked to consider these amendments, and I am instructed to say that they considered that it is not necessary so far as the four western provinces are concerned that there should be any super-

intendent of bankruptcy or any licensing of trustees. I do not wish to speak of eastern conditions at all, because I am not familiar with them. I might also say that I am instructed by my clients to say that so far as every branch of the Association is concerned they are opposed to the appointment of a superintendent of bankruptcy and to the licensing of trustees unless the costs are borne by the government as a general charge—a general government expense. We feel very strongly that where the abuses do not occur in most of the provinces it would be a hardship on the creditor class if the cost of running the department of bankruptcy—if there is a department—were levied on the estates, particularly in the provinces where there are no abuses; it would not be proper to do so. They are not opposing—none of the provinces are opposing the appointment of a superintendent of bankruptcy or the licensing of trustees so long as the cost is not assessed against the estate as is proposed by the Act.

By Mr. Kennedy:

Q. If the costs of administering the department were levied against the estates I presume that would fall upon the unsecured creditors?—A. Entirely, and the unsecured creditors get little enough. At the wind-up of a bankrupt estate they would have a further tax imposed upon them, particularly when it is not necessary. That is the attitude that I have been asked to explain, and I think that that is the general feeling of wholesale houses and a great many manufacturing concerns throughout Canada.

Q. May I ask another question. Are we to understand that so far as the west is concerned you are not opposed to the appointment of a supervisor, but you are opposed to the expense being carried by the estates?—A. Yes.

Q. You have no objection to the appointment?—A. No, no objection.

Q. Or the people you represent?—A. Not if it is necessary. We do not think abuses should exist under the Act. If this committee and this parliament deems it advisable for the purpose of putting the administration of bankruptcy on a clean and proper basis that there should be a superintendent, then we are not opposing it provided we do not have to pay the shot.

By Mr. Speakman:

Q. You said you represent in the west, speaking for these four provinces specifically, and then you went on to say that every branch of your organization has come to the same opinion. Are you still confining yourself to the branches of your organization in the west or are you speaking of Canada as a whole when you speak of every branch of your organization?—A. My first remark referred to abuses. All I can testify to before this committee is that so far as the western provinces are concerned abuses are practically non existent. I could not tell you what abuses occur in the east; but as I am saying, so far as the feeling of the various branches of the association, the wholesalers in the east as well, is concerned, they all object to the cost of this being put on the estate.

Q. That is my question—whether you speak for the entire organization?—A. Yes. You will see by one of the sections of the Act—the amendment to section 121—

The CHAIRMAN: Section 38 of the Bill.

The WITNESS: Yes. Section 38. It is proposed that the distribution by the trustee shall be "firstly the costs and expenses of the custodian and fees and expenses of the trustee; secondly, to the Receiver General of Canada, such percentage of the gross receipts received by the trustee from and out of the sale of any property of the debtor as may be fixed from time to time by the Governor General in Council for the purpose of defraying the expenses of supervision of the superintendent." That is what we object to.

By Mr. MacDonald:

Q. Does your association employ a solicitor and have a solicitor present at every bankruptcy hearing?—A. Yes.

Q. And the fees of that solicitor are paid out of the estate?—A. Yes, I believe so, sir.

Q. Don't you think that possibly a saving could be affected that way?—A. Well, I do not know. So far as my own practice is concerned I think that at least 75 per cent of the estates out west have never employed a solicitor at all.

Q. As far as the east is concerned, it is most lucrative?—A. I have heard that said of some estates that there are some attorneys making a practice of trying to bleed an estate. You will find that everywhere.

Q. Don't you think it would be possible to avoid that sort of thing?—A. Well, I do not know whether it is one of the duties of the superintendent. I suppose it would be one of the duties of the superintendent to look into that question whether or not an estate has been bled.

Q. I think he would supervise the fees and they would not be paid until he passed on them?—A. Yes. I don't know. That may be an abuse in the east; it is not an abuse in the west.

Mr. SPENCE: You have mentioned the word trustees— —A. Yes. The trustees that administer the estates.

By Hon. Mr. Elliott:

Q. Is it not a fact at the present time that the solicitors engaged in connection with bankruptcy proceedings are highly picked solicitors in the country? I was under a different impression, that bankruptcy proceedings in the country to-day are not lucrative?—A. I do not think they are lucrative now, sir—not so far as my practice is concerned. There is very little solicitor's work in bankruptcy estates in the west. So far as the east is concerned, I do not know whether they pick out—I think the reputable trustees pick out the very best solicitors they can get to handle the matter.

Mr. MACDONALD: They usually pick out one firm of solicitors in Nova Scotia. I can tell you that.

The WITNESS: Do they? I think they try to pick out the best.

Mr. KENNEDY: Have not the creditors of the estate something to say?

The WITNESS: Yes. The inspectors of the estate have the say.

Mr. MACDONALD: They come down and practically take all the proceedings of the bankrupt estates.

The WITNESS: I cannot see how they can, unless the inspectors permit it. The inspectors must approve of the appointment of a solicitor and of any work done by a solicitor for the estate.

Mr. KENNEDY: Is it not correct that before any solicitor is appointed he must be approved?

The WITNESS: Yes. No trustee can say who the solicitor will be.

Mr MACDONALD: Does not the association represent nearly all the creditors of a bankrupt estate.

The WITNESS: I would not say that; no, not all.

Mr. KENNEDY: It is not so in Winnipeg.

The WITNESS: I do not know whether they get their share of the estates in the west or not. I doubt it. There are three or four very competitive trustees that get their share.

The CHAIRMAN: You have made clear the attitude of your clients upon the most important part of this Bill. Will you now direct your remarks to other

important amendments, and when you have finished them I will ask you if you have any suggestions to make. We are trying to follow a certain sequence in the examination of witnesses.

The WITNESS: May I make one more suggestion with regard to the superintendent. It is merely this that we submit that if a superintendent is apoointed that his duties so far as examining into estates is concerned should be confined only to cases where complaints are made; that he should not inspect the fees of trustees generally without complaint. Otherwise, you will soon find that your department will be drawn into an enormous expense and will be a burden on the country.

By Mr. Kennedy:

Q. Are you suggesting that the superintendent would not have the authority to initiate inspection of his own accord?—A. Only on complaint.

Q. He could not initiate it himself?—A. No. What we are afraid of is this: Somebody will say to the superintendent, "why don't you investigate this trustee?" And then the superintendent will say, "if I am going to be charged with that I am going to investigate every trustee and every estate that the trustee handles"; and he will soon have to have an enormous staff.

The CHAIRMAN: Is it not a fact that in the Bill, the spirit, if not the letter of the law, defining the functions of the superintendent of insurance have been followed?

The WITNESS: Yes. We have followed that.

Now you wish that I refer to other amendments of the draft Bill. I might say that the bill which is before you to-day is nearly all as suggested by the Canadian Bar Association. But my friend Mr. Varcoe, or whoever drafted this left out several clauses which we deem to be very important.

The CHAIRMAN: I will ask you, if it is convenient, to refer to the bill as it stands now, and then at a later time make your suggestions of other amendments or variations.—A. Well I have not altogether prepared for that. Do you mean take it up section by section?

The CHAIRMAN: If you are satisfied in a general way with the terms of the bill, making exception of what you have said with regard to the department, the cost of appointment of superintendent, we could then go on to the short category immediately and take up your suggestions for other amendments which are not embodied in the bill.—A. I think I can do this without referring to any notes, I am very familiar with the subject.

Paragraph two is quite satisfactory. This paragraph is the result of negotiations between the Canadian Bar Association committee and the Bankers' Association. It is for the purpose of compelling a bank or any wholesale creditor or every person holding collateral notes of the debtor to value them when filing their claim, and deduct the value from their security. It is a different thing if a bank absolutely discounts a note, they do not have to value the security of the person on that note. That is where we came to the compromise.

This would be a concrete example, I understand; A is a manufacturer, he has sold goods to B, who has given him a promissory note. A. hypothecates the note with the bank, and B becomes a bankrupt. A is only secondarily responsible, the purchaser of A's goods has the first liability. This amendment merely imposes upon the bank the obligation of appraising its security?—A. Yes, the value.

Q. Saying, this is worth this value or less, and then the trustee exercises his option under the Act?—A. Yes.

Q. There is nothing new in the principle?—A. No.

Q. It is merely mentioning or defining that as one of the classes of security which may be held by a secured creditor?—A. Yes. If it is held as collateral security it must be valued. If it is discounted it need not be valued.

Section three, no objection or comment necessary. Merely to carry on the object of licensing trustees.

The same has reference to section 5.

Section 6, no objection. That is merely to carry out the licensing of trustees.

Section 7, the reason of that section is that where a debtor makes a proposal for a composition we suggest that it be first approved by the inspectors, before the trustee goes to the great expense of calling a meeting, because if it is opposed by the inspectors it will not go through anyway.

Section 8, no objection.

Section 9, there may be some discussion but our clients have no objection to it.

Section 10, is satisfactory to my clients.

Section 12 is a mere matter of procedure.

The same with section 13, a mere matter of procedure.

Section 14, satisfactory.

Section 15 is satisfactory. I might explain that the reason for Section 15, which repeals old section 32 and substitutes a new provision, is that we are placing the trustee in the same position as anyone else dealing with property. Unless the trustee registers a caveat or assignment promptly against the property, anyone dealing with the property bona fide, well the trustee is just out of luck, just the same as any ordinary person. Before that, persons dealing with property of an assignor were affected by three months' notice, the trustee had three months within which to file the assignment. It caused a great deal of trouble in passing titles. I am going to suggest, as I did in a letter to Mr. Varcoe, that the words "or caveat" be inserted in both sections 14 and 15 after the word "caution," wherever the word caution is used. My reason for that is that we do not use the word caution in the west, but we use the word caveat. It will simplify matters.

Section 16 is quite satisfactory.

Section 17 is very satisfactory.

Section 18 deals—

The CHAIRMAN: Sections 18 and 19 deal with the question of appointment of superintendent and licensing of trustees, we have already spoken in reference to that.

By Mr. Elliott:

Q. Have you considered the scope of the authority of the superindent as defined in the Act?—A. Yes I have considered it very carefully.

Q. Have you anything to suggest to the committee as to an enlargement or curtailment or variation of his powers as given by the Act?—A. Yes.

The CHAIRMAN: Mr. Elliott, do you think that question might come up a little later? We are endeavouring to get through the Act to know what he thinks of it now, and then the next series of questions to which he will address himself will be the things not in the Act.

Mr. ELLIOTT: Yes, that is the omissions which he objects to. But it just struck me that this was an opportune time, while we are going over it—

The CHAIRMAN: All right.

The WITNESS: The only suggestion I would make is that sub-paragraph (*d*) of section 36A as set out in paragraph 19 of the amended act should be eliminated. Top of page 8, it reads:

> From time to time make or cause to be made such inspection of the administration of estates as he deems expedient.

I suggest that that should be eliminated. Otherwise I think the section is very good.

Section 20 is satisfactory.

Section 21 is satisfactory.

Section 22 is satisfactory.

Section 23 I know very little about, for that section applies only to the Province of Quebec.

Section 24 is very satisfactory indeed.

Sections 25 and 26 are also satisfactory.

Section 27 is satisfactory, and Section 28.

Section 29, the alteration in subsection 5; this provides that the disbursements of a trustee shall in all cases be taxed by the prescribed authorities. Under the old provision of section 85, subsection 5 it was not necessary to tax the disbursements of a trustee in cases where these disbursements had been passed by the creditors at a general meeting, or by the inspectors. My instructions are that my clients would like to see the section stand without any amendment.

By the Chairman:

Q. You know that the amendment was suggested— —A. By the Canadian Bar Association; yes, I know that.

Q. And by alleged gross abuses in one province?—A. Yes, I know that. But my instructions now are different.

Then we object very strongly to subsection 6 as set out in paragraph 29. I do not think it is workable really.

> Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee in obtaining proxies or in procuring the trusteeship, the court shall have power on the application of a creditor or otherwise to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the inspectors or creditors to the contrary.

If that goes into force it will merely help dishonest trustees. If honest and competent trustees are handicapped in asking for proxies, if that goes into force honest trustees will obey the law, they will not canvass for proxies, but the dishonest ones will canvas either directly or by underhand methods. It will be a distinct disadvantage to the honest trustee if that goes through.

Q. You are aware that that is copied almost verbatim from the English act?—A. That may be. I am also aware that the members of the Canadian Bar Association considered that very feature. We felt that it would do a lot of harm, would cause more abuses than it would correct.

By Mr. Elliott:

Q. Their view was that the solicitation of proxies could do no harm?—A. Well we felt that it would be dangerous to say. You must not do that, because a crooked trustee would find means of doing the very thing the Act said he must not.

By Mr. Kennedy:

Q. What is the abuse that is sought to be corrected in regard to soliciting proxies?—A. When a custodian is appointed I think the practice in some provinces is for several trustees to get busy and see if they cannot get that estate. The trustee is appointed at the first meeting.

Mr. KENNEDY: What is the objection to that?

The CHAIRMAN: One of the abuses is, it is charged against the estate, and some of these trustees show more activity in getting an estate than they ever do afterwards. And that has become by devious methods the first charge on the estate. That is an ill which it is sought to remedy.

The WITNESS: Do you not think that if you adopt the policy of licensing trustees there will not be any necessity for sub-section 6? I think you will find in actual practice that once we have the licensing of trustees under a proper system there will be no necessity for that.

Mr. FRASER: I thought you objected to that?

The WITNESS: Except at government expense. It will have to be the same policy, because if the licensing of trustees is to be done on a practical basis it must be done on recommendation and investigation of the superintendent of bankruptcy.

By Mr. Kennedy:

Q. This may or may not be the opportune time, but you do not deal with the question whether or not you favour the licensing of trustees, do you?—A. Only as part of the whole system. One could not be had without the other, if you did not have the superintendent to investigate the qualifications and financial responsibility of trustees, and recommend his appointment, then it would be merely a matter of political appointment such as we had when the Act first came into force in 1919. We had and we would have a lot of trustees who should not be trustees.

Q. The matter of licensing trustees would not follow from the provision for appointing a superintendent. You could have a superintendent without the licensing?—A. It would not be very much use.

By Hon. Mr. Lapointe:

Q. This sub-section 6 is not recommended by the Canadian Bar?—A. No, we thought it would bring about more abuses than the present method.

By Mr. Macdonald:

Q. It strikes me it would bring abuses, a person who goes out and canvasses for proxies should not be paid, you are taking the very power here that he should be paid?—A. I never knew anyone to be paid for canvassing.

Q. But they canvas to get the trusteeship, and then get paid. This prevents him being paid?—A. Under this sub-section 6 if a trustee goes out and asks for any proxes, and tries to get himself appointed, then he is not to be entitled to any pay, even if the inspectors and creditors pass a resolution that he is to be appointed. There is no reason why an honest and efficient trustee should not ask a friend or a creditor to give him a proxy for this meeting.

Q. As a matter of fact the court would not be obliged. It is on the application of creditors, and the court would then have power to say this man is entitled. It does not put it upon the court to defy the creditors?—A. No. Then section 30 is satisfactory. Sections 31, 32 and 33, 34, 35, 36, and 37 are satisfactory to my clients.

38 is not satisfactory, for that deals with the amendment to section 121 providing for the costs of the superintendent to fall on the estate.

Sections 39, 40, 41, 42, 43, 44, 45 and 46 are satisfactory.

Section 47 is not satisfactory. I would like to explain that the committee of the Canadian Bar Association spent a great deal of time and trouble trying to put some extra teeth into the Act, as far as the prosecution of fraudulent debtors is concerned.

We recommend that section 195 as it now stands be repealed, and another section substituted therefor. I do not wish to take up time, may I file a copy of what the Canadian Bar Association recommend?

The CHAIRMAN: The department of Justice has informed me that it was through a misunderstanding that the suggestion of the Canadian Bar Association with regard to the redrafting of section 195 was not accepted.—A. I am glad to hear that.

The CHAIRMAN: Of course it will have to run the gauntlet of the committee.—A. Well I want to say that Mr. St. Laurent went to a lot of trouble about this, he was the original drafter of this section. We all worked on it and we feel it will give a great deal more satisfaction than the old clause.

The CHAIRMAN: We will have it typed and distributed to the members of the committee.

The WITNESS: Then there is another section recommended by the Canadian Bar Association, new section 202, which is along the same lines, for the purpose of correcting dishonest practices under the Act, of which I also submit a copy.

I have a copy of the report of the Canadian Bar Association committee to the Honourable the Minister of Justice.

The CHAIRMAN: Have you any suggested amendments which you would like to bring before the Committee?—A. One or two, and they are very short.

By Hon. Mr. Lapointe:

Q. Is that report a long document?—A. It is not very long. After we circulated the printed report we made quite a number of changes, we got a lot of suggestions from different parts of Canada, and in our final report we tried to make it accord with the general suggestions we had received.

Q. You mean the final report?—A. Yes. Quite a number of changes were made.

By the Chairman:

Q. Was there a report other than the draft bill which was submitted?—A. No, that is the only report that ever reached the Hon. the Minister of Justice.

One of the amendments which I have been asked to advance for consideration of the committee is an amendment dealing with subsection 3 of section 85 of the Act, in regard to the remuneration of trustees in small estates. This matter was considered by the committee of the Canadian Bar Association and was included in the recommendations to the Hon. Minister of Justice. We found that the trustees throughout Canada lost a great deal of money in connection with the handling of small estates.

By Mr. Spence:

Q. You mean lost to the creditors?—A. Lost money, and made inadequate fees. For instance if the estate realized $500 they got $25, which would not pay them for one day's time, and it would probably be months they were handling that estate.

Q. What about the creditors?—A. Well the creditors would get hardly anything anyway.

Q. No you better give it all to the trustee!—A. No I don't think so. But we feel that if they were adequately paid in connection with small estates this difficulty of abuses would gradually die out.

By the Chairman:

Q. Did you consider the feasibility of having small estates administered by one of the officers mentioned in the Act without charge? In England, if my memory is correct, estates the assets of which are below a given amount are administered by the officers of the Bankruptcy Court without any charge whatever.—A. Yes sir, but in our country we have no machinery for it.

Q. I am aware of that, but my question is, had you considered it?—A. Yes I had considered it very frequently.

Q. Placing these small estates within the jurisdiction of these officials, who would receive no remuneration for it?—A. Yes I have often considered that, and I think it would be a very good plan indeed if you could provide adequate machinery for the official receivers to handle these small estates. I think it would be very satisfactory. But they have not the machinery at present.

I submit the proposed amendments to section 83 sub-section 3.

By Mr. Fraser:

Q. Why could not the official administrator take charge of a bankrupt's estate as well as a deceased person's estate?—A. If they would take it, but I do not think they would want to. There are so many estates that go around begging that no one will take.

Q. In British Columbia they have no option. He is an official receiver, an official of the government, it is part of his daily routine to attend to just such matters as that.—A. Something might be worked out. That is very similar to the suggestion made by the Chairman.

By Mr. Carmichael:

Q. The suggestion has been made to me, I presume applying more particularly to the Prairie provinces, that the department of the Attorney general should handle the closing up of some estates.—A. That would be very nice if they would do it, but the Federal House would have no power to ask the Attorney General of the province to do that.

Q. If that course were followed would it not tend to be a much cheaper course for the creditors than the course now followed?—A. I doubt very much whether it would. I am not a practising trustee, but I doubt it. Probably Mr. Clarkson can answer it later.

Q. The criticism I have heard is that when an estate is wound up the trustee or liquidator has practically all and the creditors nothing.—A. That may be the case with the smaller estates, not where the assets are fairly large. We have no complaint in the West. Of course one has to recognize that when a bankrupt stock is offered for sale people only bid 30 or 40 or 50 cents on the dollar, and the assets do dwindle in amount. But as far as we are concerned in the West we are not complaining about fees.

By the Chairman:

Q. Have you any other amendment which you wish to suggest?—A. Yes sir, I am suggesting an amendment to section 125. May I read section 125?

> Nothing in the four last preceding sections shall interfere with the collection of any taxes, rates or assessments payable by or levied or imposed upon the debtor or upon any property of the debtor under any law of the Dominion, or of the province wherein such property is situate, or in which the debtor resides, nor prejudice or affect any lien or charge in respect of such property created by any such laws.

We find that in a great many estates taxes have been allowed to run for years and years by the municipality or other corporation having a lien, and that these taxes eat up nearly all of the estate, particularly small ones. We are asking this amendment, to add:

> Provided, however, that any such taxes, rates or assessments shall rank only after the claims set out in sub-paragraph "thirdly" of Section 121 of this act, and shall in no case be given priority over the claims of the ordinary creditors for more than one year's arrears.

We feel that these taxes should rank after wages. In many estates they eat up the estate ahead of wages even. We think they should be restricted to one year's arrears.

Q. Have we power to pass that?—A. Yes, the Federal House certainly has power to do that.

Q. Will the provinces agree to that?—A. I do not suppose they will be very glad about it, but I think it is only reasonable if they let their taxes run years and years, that they should be content with the preference for one year and rank as ordinary creditors for the balance.

Mr. GOBEIL: Would not this act against the municipalities?—A. I think, sir, it will make them collect their taxes more promptly.

Mr. SPENCE: What right has the municipality to all the money, and the creditors nothing?—A. That is right, and it will make them look after their taxes more promptly.

By Mr. Anderson:

Q. That would only apply to taxes chargeable against real property. What about business tax?—A. Well it is the same thing, it is a lien on the goods. We say let them have preference for one year. It applies to any taxes or assessment.

Q. But the business tax remedy is against the goods only.—A. Well that is our suggestion.

I have one or two more amendments. I suggest amending section 193 –

The CHAIRMAN: If you have no other amendments, Mr. Grundy, I want to get them in as one exhibit.

Mr. GRUNDY: Just the amendment to section 193, by striking out the words "who has on any previous occasion been adjudged bankrupt or made an authorized assignment as a creditor." That would compel a man to keep proper books whether he was adjudged bankrupt on another occasion. I suggest section 105 be amended by substituting another section, copy of which I am filing here, which is approving the debtors against an estate should contain more particulars, and it gives power to the trustee to call for further particulars of the claim. Sometimes false claims are put against an estate and the trustee thereupon has been handicapped.

Hon. Mr. LAPOINTE: Section 105 is one that was changed by the new bill.

Mr. GRUNDY: Section 4 of section 105. We suggest that be repealed and this be substituted therefor. I think that should be in there because I have often found in my experience the trustee is handicapped in getting information as to claims. This goes further. It gives the right to the trustee to get further information, to dig into the claim to see if it is just.

The CHAIRMAN: Mr. Grundy, before you leave, I would like you to verify that you have handed in seven suggested amendments to sections 36, 85, 105, 125, 193, 195 and 202. Will you file them as one exhibit?

Mr. GRUNDY: Yes.

The CHAIRMAN: Will you tell the Committee whether the agitation which has gathered some volume in Quebec has had any repercussion in the west. The Act does not apply to farmers but the farmers might avail themselves of the Act.

Mr. GRUNDY: Yes, farmers in Quebec complain bitterly that their credit has been impaired by so many farmers becoming bankrupt and doing it unnecessarily and they are desirous that it should become impossible for a farmer to make a cession of his property for the benefit of his creditors.

The CHAIRMAN: Is there any feeling of that description in the west?

Mr. GRUNDY: I have given quite a bit of thought to that. The conditions in the west are shortly that in each of our western provinces, Manitoba, Saskatchewan and Alberta, we have debt adjustment acts, with a chairman and a board, who look after the affairs of the farmer; if he gets into trouble and is unable to pay his debts he goes to this adjustment board and time is given to him by the board. So far as we are concerned there is no necessity for the Bankruptcy Act to be enforced. I see no reason for amending this Act, so far as farmers are concerned, whether it is voluntary or involuntary proceedings.

Hon. Mr. LAPOINTE: We have always been told it is essential in the western provinces.

Mr. GRUNDY: We are told, and I feel that the provinces are going so far in protecting the farmers there is no necessity for this Act to be used at all.

Mr. SPEAKMAN: These adjustment boards are of recent creation.

Mr. GRUNDY: I do not think there is one assignment in six months of a farmer in the west.

Mr. KENNEDY: In the Debt Adjustment Act there would be no provision for the farmer in the division of his estate getting a clearance of his estate?

Mr. GRUNDY: No.

Mr. KENNEDY: The Debt Adjustment Act does not refer to farmers exclusively.

Mr. GRUNDY: No, not necessarily. There is another question that might come up before the committee, the illustration of the voluntary procedure of the Act, of the small wage earner.

The CHAIRMAN: The small wage earner is in the same position the farmer is in. He might not be made bankrupt but he may avail himself of the Act voluntarily.

Mr. GRUNDY: Yes, that is it.

The CHAIRMAN: Has any gentleman any question to put to Mr. Grundy? Thank you, sir.

Mr. GRUNDY: If you are thinking at any time of dealing with the question of the wage earners there is a very good volume under the American Act for the amortization of the debts of the wage earners. It has just come to me, and I wired Washington for a dozen copies, if you wish to keep it.

The CHAIRMAN: I suggest you leave as many as you can with the clerk, to be available to the committee.

Mr. KENNEDY: Will you be available later?

Mr. GRUNDY: I think I will be available later, until Friday anyway, sir.

The CHAIRMAN: Mr. Varcoe, who has prepared a statement of the reasons for the preparation of this Act, will make way for Mr. Clarkson, of Toronto, who is here and would like to be heard this afternoon; if the committee is willing we will hear Mr. Varcoe to-morrow.

G. T. CLARKSON, called.

By the Chairman:

Q. I do not know whether you were here when we started with Mr. Grundy. We have asked the gentlemen to direct their remarks in the first place to the main feature of the Act, its creation, then a general discussion of the Act itself, then of any amendments which are not in the bill?—A. May I say first I represent the Toronto Board of Trade, the Dominion Association of Chartered Accountants. I am also appearing on our own behalf.

Q. That is, representing your own firm?—A. Well, we have been in business practically for 70 years and we think we have some knowledge and I feel I would

like to be heard in connection with it. With regard to the appointment of superintendents, personally I am in favour of it and also the licensing of trustees on the ground I do not think you will be able to control the actions of trustees of a class except through licensing and subject to withdrawal. At the same time I would say too, as far as Ontario is concerned, the defaults to trustees over 40 years has been practically negligible. Prior to the Federal Bankruptcy Act there were a few defaults and in nearly every case that they run back in my memory they occurred with people who divided their fees. Since the Bankruptcy Act has been passed I would say the majority of the difficulties have arisen in respect to people who handle small estates, really on a 5 per cent basis, where they cannot cover their costs. As far as reputable trustees are concerned they do not want these estates at all. We take an estate under a couple of thousand dollars; our disbursements, out of pocket expenses, disbursement expenses run from $75 to $100. There is no money in it. Nevertheless the trustees of the better class take these estates when they have to because their clients desire them to handle them. Otherwise they would be glad to be without them. I think that opinion is practically unanimous amongst trustees of the better class. As I say, a great many difficulties in connection with the Act have arisen because of the inadequate compensation paid with respect to small estates. There is a provision in the Act allowing application to be made to the court for increased remuneration. Many of the better class trustees do not like to apply to the court. So far as our firm is concerned we very very seldom do it. We would rather take a loss than go to court. The trustees of that class, that handle small estates, run after people largely and divide their fees. They are the people from whom there is complaint. Outside of that class I do not think there is any profession in Ontario where the members are more efficient and more honest. I have discussed the matter with judicial officers and other people and they are of the same opinion. Therefore, so far as Ontario is concerned, as to the question of necessity, I do not think it is necessary to appoint superintendents or to license trustees, if you will face the human element and not ask trustees to do something for less than it costs them. For over 40 years, however, there has always been a certain amount of discontent about the liquidating of estates in Quebec partially because their preferential rates to creditors were very very much less extensive than in Ontario; also the expense of liquidating estates brought it up more until this Bankruptcy Act came in. I have never had any fighting for claims. Ever since the Bankruptcy Act came in it is beginning to appear in spots and it is these spots where there are the difficulties, where there are complaints. Personally I favour appointing a superintendent in bankruptcy, also licensing trustees but only on this condition, that the duty of the superintendent be limited to the licensing of trustees and to the investigation or administration of estates after complaint. I have read this clause in the Act and I have had a certain measure of knowledge as to parliamentary or governmental matters. The Act says, "The superintendent might investigate such estates as he deems it expedient." It leaves it in his power to determine what he shall investigate but I think everybody familiar with governmental practice will recognize that if the superintendent goes along and investigates a few of these estates something will occur, some mess will turn up and he will be criticized and he has to make up his mind to go through the whole thing. He will have an enormous department. So far as that is concerned the people of the Toronto Board of Trade and those others whom I represent are distinctly opposed to it. They are quite willing to have superintendents, quite willing to have licensing of trustees, but they are very much set against such wide powers being given to him, also set against the cost being set as a burden on the estate. Will I proceed through this Act, Mr. Chairman?

By the Chairman:

Q. Yes, if it is necessary.—A. I could give you, if you wanted it, some sort of a picture as to what has led up to these excessive costs of liquidating estates. I think it would be well to file it, showing some of the phases, because in my opinion this Bankruptcy Act is responsible for a considerable increase in the cost. The trustees, in my opinion, are not responsible for this condition. I think it is the Act very largely; it is the increased taxation. Perhaps you would prefer I went through the Act first and then mention the other matters.

Q. I would prefer you to suit your own convenience.—A. Suppose I run through the Act.

Q. Yes.—A. The other thing will not take more than a few minutes. That is the position with regard to superintendents. It is all right to approve of superintendents and the licensing of trustees providing the cost is paid by the Government, also providing these superintendents are limited to the licensing of trustees and also to investigation after complaint. The next point I have does not affect me in Ontario but I would just like to draw your attention to subsection 10 of clause 23. This applies to Quebec only in fixing the remuneration of the trustee, only that part of the sale price which is available for distribution amongst ordinary creditors shall be taken into account. I have had practical experience in connection with the practice in Quebec. While I think it is utterly unfair to charge the creditor on a gross amount, still I think many instances might arise where it is equally unfair to pay the trustee on a net amount. I think there should be more leeway so the court can determine what is fair.

Q. In Quebec we are under this disadvantage as regards taxation: It is all statutory and there is no opportunity for the exercise of discretion except in the interpretation of a statute?—A. I am not familiar with Quebec so much but in Ontario, take the Stimson case, where one handles $5,000,000 worth of real estate and by the time we get through the present trend of affairs we might not get $100,000 out of it. Five thousand would be unfair to a trustee, just as unfair as it would be to credit him with $5,000,000.

Q. I think one of the difficulties we contend with in Quebec is that we have engrafted onto our system a system with which we are unfamiliar and it has not yet been adapted to the requirements mainly of the people who are administering it or its victims?—A. The next clause would be clause 26, where it was required to mail to the superintendent and the Dominion Statistician a large amount of information. Now, if the superintendent is going to make use of the information he will engage a large staff to analyse it or see the effect of it. If he has not got such a staff he can be held responsible for what is included in it and he will be brought in a very embarrassing position. It seems to me it is wholly useless to go and snow the superintendent under with a fund of information, an enormous amount of information like that unless you give him a staff to analyse it and take some benefit from it, so I am opposed to that section completely, having regard to my previous attitude with respect to superintendents. The same remarks apply to section 28, which is just the same category.

Q. With regard to 26 do you object to that because the section calls for the information to be sent to two recipients or because you think the information is useless?—A. To be perfectly frank I have always felt that the sending of this information to the Dominion Statistician meant nothing, and I do not object to it going to the Dominion Statistician, or what use he will make of it I do not know, but I say from the standpoint of the Government it is dangerous to put this information in the hands of the trustee in bankruptcy unless he makes some real use of it. He cannot make use of it unless he has a big staff and if you have to send it to him you will put a further burden on the estate.

The CHAIRMAN: Supposing that the superintendents were deleted and it simply went to the Dominion Statistician?

The WITNESS: I would not object to it; but I do not see what good it does him.

By Hon. Mr. Lapointe:

Q. You say it would be dangerous to put that in the hands of the superintendent unless he makes use of it?—A. Yes.

Q. In what way?—A. Someone says you have all the information with regard to these estates and something improper has happened here and you have paid no attention to it.

Q. That is where the danger arises?—A. Sometimes it is better not to have a thing unless you make use of it. I say that the superintendent could not get this information from all over Canada and make use of it unless he had a very large staff, because there is an enormous amount of it. If they want to do it and charge it to the government, all right, but will it do any good?

Mr. FRASER: A correction of irregularity.

The WITNESS: Yes. If you put a fund of information in your regulations and you have no means of using it, somebody says, "I gave you this information, why don't you deal with it?" You are worse off having the information than not having it.

Mr. SPEAKMAN: You have a responsibility you cannot discharge unless you have an extensive staff.

The WITNESS: Exactly. If you want to send it to the statistician I am personally satisfied that no benefit will come from it. Now, as to section 29: "The disbursements of a trustee shall be taxed by the prescribed authorities." Ordinarily what happens with us—and I know of no complaints of it—the creditors authorize the inspectors to approve of the trustee accounts. They start and go over them, and if they find them in good order they approve of them. The trustee goes up before the referee and the referee looks over them and if there is anything there he does not like he makes you prove it. What more do you want? Do you want to go to a third man and ask the superintendent or some other authority to go over it? The money belongs to the creditors. There has been no objection in our province. The only point to which there has been objections is on the question of legal fees.

By the Chairman:

Q. On the question of what?—A. Legal fees. Mr. Hackett, out in the west, I understand, 90 per cent of the bankruptcy business is done by voluntary assignment. In Ontario, I would say, 50 per cent is voluntary and 50 per cent is not voluntary.

Q. According to the figures we have, in Ontario the assignments last year were 650 and the receiving orders 185?—A. That cannot be right.

Q. In Quebec—A. Receiving orders were 185?.

Q. Yes. In Quebec the assignments were 1,219 and receiving orders 362?—A. Then all I can say is that in our office I would say that three-quarters of our business comes from receiver estates and one-quarter from assignments, and I think it will be fairly well conceded that we handle a substantial portion of the large assignments in the province of Ontario.

Q. But don't you think that that fact may explain something? I am assuming for the moment that the business which is attended to by your office is not criticized and that the big proportion of the business which is not criticized consists of receiving orders and that the assignments which have been procured and induced by solicitation are one of the great sources of

criticism?—A. No. You surprise me when you say that the percentage of receiver estates is so low, because I would not have believed it otherwise. But here is the point. Mr. Grundy says that out in the western provinces in most of the estates the solicitor is not employed. In Ontario I would say in by far the greater proportion of the estates solicitors are directly interested. Now, the solicitor is appointed by a Board of Inspectors. The trustee cannot appoint him without it. The inspectors appoint them. The object of the solicitors overwhelmingly is responsible and decent as can be, and you have a tariff under your Act, and if you get an estate with a complacent trustee and a solicitor who knows how to take advantage of that tariff he can run up a substantial bill of costs; but I would say that the main expenses of liquidating estates to-day under the Bankruptcy Act arise not through the cost of trustees but through preferential claims.

By Mr. Turnbull:

Q. Is there not a limitation under the Act for solicitor's fees?—A. They can get it taxed under special circumstances.

Q. It is the Registrar's fault?—A. No, taxed according to the tariff.

Q. There is a limitation under the Act?—A. I think there is a leeway—a means of getting around it.

Q. By some person's permission?—A. With the courts' permission, under taxation. You have to be very careful about that because it will hit back the other way. I am saying that in estates where the costs of liquidation are complained of you will find that a large proportion of the estates are taken by preferential claim, wages, taxes, both provincially, federally and municipally.

By the Chairman:

Q. Legal fees and trustee fees?—A. Well, trustee's fees. I resent very much the imputations which have been made against trustees. That is not so. As far as Ontario is concerned, that is not so, and you can inquire from the courts if you like. You can ask Mr. Riley in Toronto if you like.

Q. I am speaking with regard to the province of Quebec?—A. I cannot speak of there.

Q. That is where the criticism lies, in Quebec, because the solicitor, according to my information, has pretty well disappeared from the winding-up of bankrupt estates of the types which are under criticism at the present time? —A. The type under criticism is the smaller estate, the small commercial estates, and I would say that where there is ground for criticism here in Ontario you will find that it is the preferential claim which takes the large slice of the estate, and you will find very frequently it is the legal expenses. So far as the trustees are concerned, excepting a few of them of a class where they adopt objectionable practices, it is not the fault of the trustees. If I may afterwards, I will point out to you two or three places in this Act where the simple method we had of dealing with matters under the old Ontario Assessment Act has been done away with and added costs incurred. Now, the next clause is the one with regard to remuneration, 29. In certain cases solicitation of proxies. Our office has never, during my connection with it, solicited proxies excepting upon very isolated occasions where efforts were made by other trustees to take the estates out of our hands. So far as I am concerned, if you pass that section it would not affect me, but what it would do would be to leave me open to have estates taken away from me by somebody outside, and what I am afraid of is that if you pass that section you will build up a practice among certain solicitors and trustees who will make it their business to go out and get proxies and pay for them if necessary and then they will take these proxies and go to trustees of a class and say, "How much am I bid to turn these things over to you?" That is exactly what will happen.

By Mr. Anderson:

Q. What you say is that so far as you are concerned this does not worry you a bit, but there some members in the same profession who are out after these assignments and solicit for them?—A. Absolutely.

Q. And to the detriment of yourself?—A. That situation has been very acute in Montreal for years and years. It has been moving up a little bit into Ontario now; yet, until recently, we have never had it.

Q. This is the English practice?—A. It may be so, but I tell you that is exactly what will happen. It leaves me wide open to have estates taken away from me, and I would not break the Act.

Q. Are you in favour of it being in there?—A. No. I am in favour of it being taken out. Now, the next point is, "The following persons shall not be entitled to vote for the appointment of a trustee," clause 31, clause 2: "If the bankrupt or authorized assignor is an incorporated company, any officer, director or employee thereof." Personally, I think that is very, very unfair. I think if you take a public company and somebody owns a share in it, the creditor cannot vote. When you get larger corporations in bankruptcy you frequently find the shareholders or somebody like that who have advanced sums of money. Why should you bar them out? I cannot see the logic of that provision. Now section 32 on page 13, "No person shall be eligible to be appointed or to act as an inspector who is a party to any action or proceedings by or against an estate." At the present time a person who is a party to an action can become an inspector, but he is not allowed to vote on anything that affects his interest, and we have never had any trouble so far; we have always been able to get along perfectly all right.

Mr. SPENCE: Inspectors are chosen by the creditors.

The WITNESS: Yes. They are chosen by the creditors. Supposing you pass this section and you want to get rid of an inspector what you have to do—the other inspectors will launch an action against his claim and out he goes. I cannot see any harm in the present section. It has served us for years, and it is satisfactory.

Mr. GRUNDY: The committee of the Bar Association did not recommend that.

The WITNESS: No. It seems to me we are all right the way we are. Now, section 195. I think it is fair, Mr. Chairman, to say I discussed the matter with some representatives of the Canadian Bar Association and I have discussed with representatives of the Creditors' Association and discussed it with our own provincial authority. The difficulty with this Act is that there are no teeth in it, and the way things are now the debtors can commit fraud with impunity and nothing is done. You see, the psychology of creditors is this: We might just as well be frank about it. A creditor sells goods to a debtor and the debtor commits a fraudulent failure, and the creditor is more interested in getting some money back than he is in prosecuting the debtor and the consequence is they will not prosecute debtors excepting in isolated—perhaps not quite so restricted as that—in most cases. They bargain with the debtor to see how much they can get out of his estate and they usually make a compromise and the debtor knows this and he just plays for a compromise and when he pays it he is scot free. Now, that is one situation. The other picture is this. Somebody makes up his mind to commit a fraudulent failure. He has all the time in the world at his disposal to do it. He gets advice from somebody who knows how to do it. He takes his time. He arranges his books and his records and his evidence, and when he has got them in shape he wants, or has destroyed them, he fails, and we find he has no estate, and he probably steals forty or fifty thousand dollars. He goes to the creditors. Now, the creditors get upset and make up their minds

to prosecute him. The first difficulty they run up against is that neither the Federal or Provincial government have tendered proper assistance. They do not to-day. In recent instances where we have tried to prosecute people we have been told, "That is all right so long as the estate will pay for the prosecution." The government will not do it. In every case where we have prosecuted and the debtor has been fined the province has taken the costs out of the fine. There has been no proper support on the part of any government in prosecuting a fraud.

Mr. SPENCE: That is right.

The WITNESS: Now, you make up your mind to prosecute, and we have to prosecute a debtor who has had all the time he wants to get rid of incriminating evidence. Your creditor's hands are tied behind his back. In some cases you find it very difficult to get at the debtor. My feeling about it is this, and I am strongly of this conviction, that immediately following every assignment for bankruptcy a debtor should be examined by an officer of the Crown, and after that, if he fails in the opinion of the court, to satisfy the court that he has dealt with his estate and business honestly, he should go to jail. Now, you say, that is not in accord with British law; you must prove him guilty and not put the onus on him. But in your Tax Acts you do not adopt that; in your Narcotic Act you do not adopt it; in your Liquor Act you do not adopt it. I do not know why you should tie yourselves to a rule which prevents you from curing an evil when if you put the onus on the debtor you could save 90 per cent of those frauds inside of two months if you did that. I have discussed this matter with people who know, with court officials, with some of the judges, some of the criminal authorities, and I have not seen one yet who has said I am wrong. They believe it. And I think you have got to come to that before you clean up this present situation. If you put some teeth like that in that Act I am satisfied you will get rid of most of your fraudulent failures in Canada very quickly.

By the Chairman:

Q. You have seen the amendment which was suggested?—A. I had it read to me casually. I think I had to apologize to Mr. Grundy for blaming him for not dealing with what I think was the crucial thing in connection with this Act, but when I found the Bar Association had put that in and I had time to study it I am absolutely convinced that if you are going to have an Act that will prevent fraud you have got to go to that distance, and I am also satisfied that if you do you will get rid of a lot of fraud. Now, there is another thing I think should be done and that is this. In connection with remuneration in small estates, you are going to put a premium upon dishonesty until you allow trustees a remuneration in connection with small estates that will pay their costs and leave them some modicum of profit.

Q. Would you think, Mr. Clarkson, of enacting legislation to cause small estates to be administered by officials of the courts gratuitously—by the official receiver officers?—A. Well, Mr. Chairman, if it could be done efficiently I would have no objection in the world to it, but I think you know as well as I do that if you commit a work of that kind to underpaid and inexperienced government officials you save some expense but you lose just as much or more than that in inefficiency. Now, I say that realizing that there is no benefit, there is no money to a trustee handling estates of that kind; but I am fearful that the organization does not exist and I am not satisfied they will do it efficiently. Because, remember to handle an estate you have got to have business knowledge and you have got to have a staff of a kind. Now, one of our principal court officials was very strongly of that opinion, and I said to him, "That is all right; how are you going to take your inventories in the first place?" He said,

"I will go down to your office and I will hire some people to take my inventories." I said, "suppose I cannot give you those men or don't give you those men, what will you do?"

Q. Those are very small estates?—A. I quite agree. They are of no benefit to trustees. I would rather do without them, but I am fearful that you would not get any advantage. The answer to it would be, would your creditors prefer to have it done or not? I think in most cases the creditors would say, "No, we will go through the normal course."

By Mr. Turnbull:

Q. Would the debtor be interested?—A. In most cases the debtor is so bankrupt it is of no interest to him.

Q. There is the matter of discharge. There is considerable complaint among the smaller debtors in western Canada that the estates are turned over to trustees and they are so handled that a small amount is realized on it and they cannot get the discharge.

By the Chairman:

Q. There is the case also of the man who goes into bankruptcy and the estate is so involved or so small that nothing is done and he remains in suspense. He is in bankruptcy yet nothing is done to wind up the estate and we have scores of cases of that kind?—A. I do not know. Where would you get that complaint from? It is not logical that that should happen, because if a trustee takes a small estate and does not do anything, before he knows it the rental eats it up and he does not get his expenses. Your trouble is that every year through the last few years there is one more expense in these states, one more government tax, one more detail to be performed, and it is increasing taxation, and the formalities under this Act, as far as Ontario is concerned, cause increased expense.

Q. Take the case of the man who makes an assignment. Sometimes a custodian is appointed and sometimes not, and if a prospective trustee cannot see an opportunity of at least getting back his disbursements he is not very enthusiastic about the estate?—A. He should not take it.

Q. But you have a class of bankrupt debtors whose bankruptcy is not cleared up because there is no voluntary machinery to clear them away, and there is no state machinery to disencumber the business world of these anomalies? —A. Well, take the small estates. Under the old Assignments and Preferences Act we would call a meeting at a place convenient to the largest creditors. They would appoint inspectors and they would take that estate and wind it up in a businesslike way, and you are through with it. Under the Federal Bankruptcy Act the first thing they did to you was—he has got to make an assignment to a custodian and before they will take that assignment he has got to go and prepare a long statement which is not worth the paper it is written on, and yet the registrar will not take that assignment, and after you get the assignment what have you got to do? You have to hold a meeting in the place of the debtor and the creditors will not go there. The consequence is that you build up a practice of a certain class of people going out and canvassing proxies, and, coincident with that, some of them pay for the proxy and they go up to the places and they hold a meeting and they appoint trustees and a board of inspectors and solicitors, and by the time they get through there is nothing left. Now, if they had left us alone and allowed that meeting to be called at the place convenient to the creditor two-thirds of that stuff would never have occurred; and that is one place where I think this Act should be amended.

By Mr. Turnbull:

Q. Have you any suggestion to make for a case like that, where the assets, over and above the secured claims, are so small that a trustee cannot be obtained

to take the estate and then the debtor is bankrupt and he is liable to a penalty if he continues to do business although there is no way by which he can assign or get a receiving order? Have you any suggestions to make in that regard?—A. I have never seen that case arise where there were any assets and you could not get some trustees to take it.

Q. I have.—A. I have not.

Q. We get them in western Canada. There is hardly a bankrupt farmer in western Canada who is not in that position.—A. As far as farmers are concerned, the only contact with their position I have had was through the Home Bank when it went under. We had a very large indebtedness owing by farmers and we never pressed them or tried to put them into bankruptcy. But my own opinion is that a farmer should not be subject to this Act.

The CHAIRMAN: Should not be able to avail themselves of it?

The WITNESS: No, sir.

By Mr. Turnbull:

Q. I was not thinking of farmers in the first place. I know cases of small business in western Canada where some creditor has secured a chattel mortgage. There is nothing in the estate after the chattel mortgage is through, and the creditor sits there and does not realize.—A. You get a few of those isolated cases. It is one of those cases where if you legislate—that does not often occur, does it? Very seldom. You cannot legislate for everything.

Q. It has a certain amount of frequency out in the west where business is smaller.—A. I have not seen it. In the smaller estates I would not have any objection to the courts doing it if they can. The apprehension I have is that the expense would not be any less.

The CHAIRMAN: The committee undertook to sit two hours this afternoon, but if you can finish your statement we will ask the gentlemen if they will prolong the sitting a little bit.

The WITNESS: I have very little more to say. There are some cases in connection with the Act where I would like to see an improvement, or elimination. It looks to me in a great many cases as though the Act had been framed in a way that is a distinct impediment to proper administration. For instance, a trustee cannot do any administrative act of importance unless he gets the written approval of the inspectors. The fees paid the inspectors are so small that the inspectors will not attend meetings, and the consequence is that to get their consent ordinarily the trustee has to chase the inspector all over and get him to sign these things before he can do anything.

By the Chairman:

Q. It is not necessary that the inspectors hold meetings in order to get the regulations signed?—A. I do not see why you need the written consent of these people to this, that and the other. I think that is an impediment.

Another thing is that there ought to be more elasticity in the fees payable to inspectors. I had one estate with $4,000,000 involved, the inspectors had to take very, very serious responsibility, and when we got through I was allowed to pay them $10 a meeting, about five meetings. I went to the court for permission to pay them something higher, and the Court said, Nothing doing, you cannot do it, the Act will not allow it. I think there ought to be more elasticity in that.

Another difficulty we have is that very frequently when we get an important estate the Department of Revenue notifies us, We have not had any taxes for ten or five years, we require you to go over the accounts for that period and render a statement of the earnings of this company. That takes a lot of time and considerable expense, all of which is imposed on the creditors, because the

Crown has not for a long period of time pressed its rights. I think there ought to be some limitation. If the Crown does not press for its taxes it ought to be limited as to preference to two years. I think it is utterly unfair for the Crown to sit by for three, five or seven years and then come to a trustee and say, You make these accounts up, and until you have done it you cannot divide this estate. Then he makes them up and the creditors pay the costs.

Similarly with the Workmen's Compensation Board, they have a preferred right, and time and time again we waste months before we can get their accounts, we are held up.

There are some other minor matters of operation that I could mention, but those are the principal points.

Q. We have a letter written by you on the 15th of March, which is apparently the result of a good deal of thought on your part. We can read this letter in conjunction with your evidence; or if there is some minor matter which occurs to you while the committee is sitting you might write us again.?—A. Might I say with all friendliness as one who has been in active practice for a long period of time, and who has a practical knowledge of this situation, the thing that has struck me as unfortunate is that when this Bankruptcy Act has come up for amendment the advice of trustees who have had wide experience, like ourselves, has not been sought. I think on nearly every occasion we have heard of these amendments when it is too late to do what should be done. If you want advice on a legal matter you go to a lawyer. In connection with bankruptcy legal counsel know it from the legal aspect, the court officers know it from the aspect that comes before them; but from the practical standpoint the only people who really know a great many of these matters are the trustees in active practice. We would be only too glad at any time to discuss the matter. I have discussed it with our provincial authorities and a great many other bodies. But I do feel that in that Act there are a great many impediments that could be cleared away, and the costs reduced, and what I want to make clear is that I think it is extraordinarily unfair to contend that the trustees are responsible for this. It is the Act, and it is these preferences, as far as Ontario is concerned. And even at that there is very little ground for complaint.

Well sir, I cannot be here to-morrow, but if there is any matter you would care for me to speak about I shall be very glad to take it up any time at your convenience.

Q. You have made it clear that in your view farmers should not be subject to the Act, nor should it be possible that they avail themselves of the Act?—A. That is right.

Q. And placing the burden of proof upon every bankrupt to disculpate himself, that is your main suggestion?—A. Absolutely.

Q. And you agree that a superintendent might be appointed provided his functions are limited, and that he is paid by the government?—A. Well I am in favour of that. And if his duties are limited to that the cost that the estate would have to bear would be very little.

The Committee adjourned to meet Thursday, the 14th of April, at 3.30 p.m.

APPENDIX I

AMENDMENTS SUGGESTED AND FILED BY MR. H. P. GRUNDY

Section (36) Subsection (2) of the Bankruptcy Act should be amended by adding at the end thereof the following words "the amount of said security may be reduced at any time or from time to time during the administration of the estate if such a reduction is authorized by the Inspector."

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21. Subsection (3) of Section 85 of the Act is repealed, and the following substituted therefor:

> (3) Where the remuneration of the Trustee has not been fixed under the two last preceding subsections before the final dividend the trustee may insert in the final dividend sheet as his remuneration a sum not exceeding the percentages in the following table, based on the cash receipts:
>
> | | |
> |---|---|
> | 10 per cent on the first | $1,000 |
> | 9 per cent on the next | 500 |
> | 8 per cent on the next | 500 |
> | 7 per cent on the next | 500 |
> | 6 per cent on the next | 500 |
> | 5 per cent above | 3,000 |
>
> with a minimum remuneration in any one estate of $100 subject to reduction by the Court upon application of any creditor or of the debtor.

Subsection (4) of Section (105) should be repealed and the following substituted therefor:

> The statutory declaration shall contain or refer to a statement of account showing particulars of the debt and shall specify the vouchers, if any, by which the same can be substantiated, and the trustee may and shall upon request of an Inspector of an estate at any time, call for the production of vouchers, invoices, acceptances, bills of lading, receipts, cheques, notes, bank pass-books, or books of accounts, and without being limited by the foregoing generally such further or other evidence as the trustee or inspectors may find to be necessary to examine in order to satisfy him or them that the claims may be allowed.

Section 125 of the Act should be amended by adding thereto the following words:

> Provided, however that any such taxes, rates or assessments shall rank only after the claims set out in sub-paragraph "thirdly" of Section 121 of this Act, and shall in no case be given priority over the claims of the ordinary creditors for more than one year's arrears.

Section 193 of the Act should be amended by striking out the words "who has on any previous occasion been adjudged bankrupt or made an authorized assignment with his creditors" where such words occur in the first, second and third lines of said Section.

47. Section 195 of the said Act is repealed and the following substituted therefor:

(1) Whenever the Court is satisfied, upon the representation of the Superintendent or any one on his behalf, the trustee, any creditor, inspector, or any other interested person, that there is ground to believe that any person has been guilty of an offence under this Act or under any statute whether Dominion or Provincial in connection with the estate of the debtor, his dealings or property, the Court may order that such person be prosecuted for such offence or be committed for trial.

(2) Whenever any official receiver, custodian or trustee shall have ground for believing that any offence under this Act or under any other Statute whether Dominion or Provincial, has been committed with respect to an estate to which he has been appointed, or that for some special reason an investigation should be had in connection therewith, it shall be the duty of such official receiver, custodian or trustee, to report such matter to the Court including in such report a statement of all the facts or circumstances of the case within his knowledge, and with the names of the witnesses who should in his opinion be examined, and a statement as to the offence or offences believed to have been committed, and to forward a copy of such report forthwith to the Superintendent.

(3) Except by leave of the Court no action shall lie against the Superintendent or any other person with respect to any representations or reports made under, or any action taken pursuant to the provisions of this Act.

43. The said Act is further amended by adding the following sections:

202. If, on being required by the Court, at any time, to account for his deficiency of assets to meet his liabilities or for the loss of any substantial part of his estate incurred within two years next preceding the making of the authorized assignment or of a receiving order as the case may be, any person who has made an authorized assignment or who has been adjudged, bankrupt, fails to give a satisfactory explanation of his deficiency of assets to meet his liabilities or the loss of any substantial part of his estate incurred within two years next preceding the making of the authorized assignment or of the receiving order, as the case may be, the Court may order him to be committed to the common jail of the judicial district in which he resides for a term not exceeding twelve months or the Court may impose a fine not exceeding $5,000 or may sentence him to both such fine and imprisonment.

203 (1) Any person who being a creditor of any person who has made an authorized assignment or in respect of whose estate a receiving order has been made, obtains or accepts or attempts to obtain or accept any preference or advantage over the other creditors of the debtor in respect of his claim against the estate of the debtor, shall be guilty of an indictable offence and liable to a fine not exceeding $2,000 or to a term not exceeding one year imprisonment or to both such fine and such imprisonment.

(2) Any person who counsels, aids or abets in the commission of the offence described in the next preceding section shall be guilty of an indictable offence and liable to a fine not exceeding $2,000 or to a term not exceeding one year imprisonment or to both such fine and such imprisonment.

SESSION 1932

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 41, AN ACT TO AMEND

THE BANKRUPTCY ACT

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

THURSDAY, APRIL 14, 1932

FRIDAY, APRIL 15, 1932

WITNESSES:

Mr. F. P. Varcoe, Justice Department, Ottawa; Mr. W. L. McQuarrie, Secretary, Saskatchewan Provincial Board of the Retail Merchants' Association of Canada, Saskatoon; Mr. S. Roy Weaver, Manager, The Shoe Manufacturers' Association, Montreal.

Appendix at End of Record.

OTTAWA
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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1932

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS, ROOM 268,

THURSDAY, April 14, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met at 3.30 p.m., Mr. Harkett, the Chairman, presiding.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Ganong, Gobeil, Anderson (*Toronto-High Park*), Spence, Kennedy (*Winnipeg South Centre*), Turnbull, Fraser (*Cariboo*), Butcher, Lapointe, Speakman, Carmichael—13.

In attendance: Messrs. F. P. Varcoe, Justice Department, Ottawa; S. E. Desmarais, M.L.A., Dominion President, Retail Merchants' Association of Canada, Richmond, P.Q.; R. Messier, Dominion Secretary, Retail Merchants' Association, Montreal; W. L. McQuarrie and E. H. Crimp, Secretary and Treasurer, respectively, Saskatchewan Provincial Board of the Retail Merchants' Association, Saskatoon; S. Roy Weaver, Manager, Shoe Manufacturers' Association, Montreal; H. P. Grundy, Henry Detchon and A. S. Crighton, representing the Canadian Credit Men's Trust Association, Winnipeg.

Mr. Varcoe was called and made a general statement bearing on the Act as it now appears on the Statute Books, and on the proposed amendments thereto. Witness retired.

Mr. McQuarrie being called, referred to the operation of the Act in the province of Saskatchewan and suggested several amendments which were filed with the Committee and which appear as an appendix to the record of to-day's proceedings. A memorandum expressing the views of the association represented by Mr. McQuarrie was filed with the Clerk to be kept in the records. Witness retired.

By unanimous consent, the Committee adjourned until 10 a.m. to-morrow, Friday, instead of 10.30 as previously arranged.

R. ARSENAULT,
Clerk of the Committee.

HOUSE OF COMMONS, ROOM 268,

FRIDAY, April 15, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met at 10 a.m.

In the unavoidable absence of the Chairman, Mr. Hackett, it was moved by the Hon. Mr. Lapointe and seconded by Mr. Speakman, that Mr. MacDonald take the chair. Carried.

Members present: Messrs. MacDonald (*Cape Breton South*), Ganong, Gobeil, Anderson (*Toronto-High Park*), Spence, Kennedy (*Winnipeg South*

Centre), Turnbull, Fraser (*Cariboo*), Butcher, Lapointe, Ralston, Speakman, Carmichael—13.

In attendance: Messrs. F. P. Varcoe, Justice Department, Ottawa; S. E. Desmarais, M.L.A., Dominion President, Retail Merchants' Association, Richmond, P.Q.; R. Messier, Secretary, Retail Merchants' Association, Montreal; W. L. McQuarrie and E. H. Crimp, Secretary and Treasurer, respectively, Saskatchewan Provincial Board of Retail Merchants' Association, Saskatoon; S. Roy Weaver, Manager, The Shoe Manufacturers' Association, Montreal; H. P. Grundy, Henry Detchon and A. S. Crighton, representing the Canadian Credit Men's Trust Association, Winnipeg.

Mr. Weaver was called and read a memorandum setting out the views of The Shoe Manufacturers' Association and suggesting certain amendments to the Act. Witness retired.

It being eleven o'clock, the Committee then adjourned to meet again on Tuesday, April 19, at 10.30 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 268,

THURSDAY, April 14, 1932.

The Special Committee on Bill No. 41, an Act to amend the Bankruptcy Act, met this day at 3.30 p.m.; Mr. Hackett presiding.

F. P. VARCOE, called.

The CHAIRMAN: Mr. Varcoe will give us an outline of the legislation and some reasons which have prompted it. The Committee knows that Mr. Varcoe is in the Department of Justice, and has been entrusted with the drafting of this legislation, and has had to deal with bankruptcy all along in the Department.

The WITNESS: I might at the outset explain the circumstances under which this bill, and particularly the provisions which relate to the supervision and licensing of trustees, has reached this Committee.

The proposal which came forward from the Canadian Bar Association followed several years of criticism which has developed in various parts of the country from time to time. Finally the Bar Association undertook to study the question, and they made these recommendations. The criticism had been of such a character during the preceding few years that the Department, and I think later the Government, decided that, without perhaps approving of it in all respects considered that the scheme, having been worked out by a responsible body of persons who knew as well as anyone what conditions existed, it was only proper that the Department should put this legislation forward for consideration by this Committee. I know it was the intention of the Minister that it should come before this Committee with the idea that, while of course put forward as a Government measure, nevertheless the facts were to be ascertained by the Committee with a view to deciding whether or not some other scheme should be adopted or whether this was the best.

I think I might refer shortly to the history of the legislation since its inception in 1919. That Act provided for the administration of bankrupt estates by means of authorized trustees. The faults of the scheme became apparent very quickly, and I may say they were three in number chiefly; (1) no restriction on the authorization of trustees, except that they were to put up a bond of $15,000; (2) there was no supervision over their administration except such as the courts were able to give when the trustee finally applied for his discharge; (3) and perhaps the greatest fault in the scheme was that the trustee was always selected by a debtor. In a large majority of cases the debtor simply made an assignment to one of these authorized trustees, and that trustee was invariably more friendly with the debtor than with the creditors.

The scheme broke down pretty well at the end of about two years.

The Act of 1923 was designed to get over the difficulties of the Act of 1919. The idea behind it was that there should be complete creditor control. The authorized trustee was to go out of existence, and the creditors were to be free to choose any person they pleased as their trustee. He was to give a bond to the court, to be fixed by the court in each estate.

As a matter of machinery to enable that scheme to work it was necessary to create the office of official receiver. The official receiver is in practically every case the prothonotary or local registrar of the court having jurisdiction in bank-

ruptcy. His functions are, to receive the assignment, or Receiving Order, if the proceedings have been started in that way, to make an examination of the debtor, which is done merely by having the debtor file with the Official Receiver a long statement of his affairs which is in the form of a questionnaire, and then the Official Receiver selects a custodian, usually I think at the instance of some one or more of the principal creditors.

The custodian always hopes to become the trustee. His functions are to take charge of the assets and to summon the first meeting of creditors. The official Receiver presides at that first meeting, which is usually held in the court house or the office of the official Receiver, although that is not necessary. The Official Receiver's functions, practically speaking, end when that first meeting of creditors comes to an end and a trustee has been appointed. The trustee then carries on the administration in much the same way as was done under the old statute.

I mention these things briefly, to help in understanding what the faults of the present system are, as I see them, after reading the complaints that have been made to the Department from time to time. In the first place there is no restriction on the number of trustees who are carrying on business. I am told that in Montreal there are about 120 persons holding themselves out as trustees in bankruptcy. It is conceded by everyone that that is about five times as many as the business requires. That, of course, inevitably leads to abuses. I mention Montreal as an example, the same thing is true elsewhere, but it happens to be called to my attention that there are that many in Montreal. It is inevitable, in those circumstances, that the trustees will solicit proxies in order to get appointed, and that, as the share of each of them is small, he has to make as much as he can out of each estate as it comes aong.

A second criticism of the present Act is that there is no supervision over the trustees. Consequently there is an enormous divergence between practice in one part of the country and in another, both as to legal charges and as to the practice of trustees in making out their disbursement accounts. You will find, for example—and I mention it merely as an example—that on the question of stock-taking, one trustee will consider that the 5 per cent he gets as his fee is the remuneration for all the work he does, including taking stock whilst another trustee regards that as a disbursement which is to be received by him in addition to his fees. And in other respects there has been great divrsity from on part of the country to another in these formal matters of administration.

Then a trustee is under no obligation to any person except the creditors to bring the administration of an estate to an end. He sells the assets immediately as far as he can, the proceeds go into his bank account, and sometimes go out again before any dividend is paid to the creditors. It has frequently come to our attention that estates which might have been wound up completely in 6 months or so have dragged along for 3 or 4 years, and sometimes when that stage is reached the trustee has not got anything left. Actual frauds by trustees have not been very great, as far as I know. I do not know that there has been a great deal of loss to the creditors by actual default on the part of trustees, though we have had a few cases of that sort, but to my mind the more important abuses arise from lack of uniformity that I have mentioned, and the lack of efficiency in closing estates; and also from the fact that many of these trustees are in any case not competent to deal with the business problems involved in winding up an estate.

It was suggested yesterday by Mr. Clarkson that the work of the superintendent under the Act should be confined to the investigation of complaints. I mention that at this stage because in my experience when the complaint is made it is much too late to do anything. Furthermore the investigation of a complaint two or three years after the offence has been committed——

Mr. SPENCE: Why two or three years?

The WITNESS: Well the complaints frequently do not come in until that time. I have a case in Montreal at present where the trustee was engaged in winding up four estates, and the actual defaults on his part appeared to have been five or six years ago, yet the complaints were only made to the Department within the last year or so. That frequently happens, creditors wait and wait, and finally start to do something.

Furthermore I think it is true that the expense involved in investigating estates in that fashion would be greater than if a routine supervision were made as the estate is administered.

Mr. KENNEDY: Do you consider that a routine investigation would be effectual?

The WITNESS: I have this in mind, that the trustee would be appointed, the superintendent would be notified of that in an ordinary routine way. The documents which the trustee is required to execute from time to time as the administration proceeds, that is copies would come to the superintendent. The checking up of those documents would be a routine matter, and I think that a competent superintendent with a not very large staff would be able, in the majority of cases, to tell exactly how things were going with very little examination.

Hon. Mr. LAPOINTE: How large a staff do you think?

The WITNESS: I thought of a superintendent and two assistants, I mean perhaps a lawyer and an accountant, and probably half a dozen clerks, including a couple of stenographers.

By the Chairman:

Q. What would you say to the practical objection made by Mr. Clarkson? He said, if investigation is to be undertaken by the superintendent on his own initiative, the responsibility for the effective and honest administration will become a responsibility of the Department and of the Government.—A. My answer to that would be that if the routine examination is made that I have in mind, it is not likely that any very serious situation of that kind would arise. I took occasion last December to inquire in the Board of Trade in England, where they have the kind of examination I speak of. They tell me their men can take a statement of affairs, the final dividend sheet, and in two or three minutes tell whether it is all right, in the ordinary small estate. In the case of large estates there is no problem.

Q. But is it not a fact that bankruptcy in England is prefaced by a very grilling examination of the debtor by a public officer?—A. At some stage in the proceedings there is certainly a more effective examination of the debtor than takes place in this country. But whether that helps the Board of Trade in any way to determine whether a particular trustee has been carrying out his duties, I do not know. They have, of course, a quite different system from that which we have, or which is contemplated by this bill.

Q. Were you impressed by the argument of Mr. Clarkson that if the superintendent had the right to examine he would have to examine every bankruptcy, to protect himself if nobody else?—A. No, I do not think that is correct. From what experience I have had I think an examining officer could tell pretty well from the statements that would be submitted to his office whether or not excessive charges had been made by a trustee. I do not imagine that the superintendent is going to prevent a particular trustee from walking off with the assets, that is not the kind of supervision that is in question. The trustee is in possession of the assets, and the superintendent is not to be a policeman to see that he keeps them. The supervision that I think was contemplated was not to prevent the

trustee who had made up his mind to defraud the creditors from succeeding in doing so, but to get after the man who is overcharging the creditors.

Q. And in any event there is the bond.—A. In any event there is the bond to protect the creditors against default.

By Mr. Gobeil:

Q. As to the suggestion of Mr. Clarkson that the superintendent make investigation only on complaint, you object to that because you say complaints come too late?—A. That is one reason.

Q. Are you not of opinion that if the public knew that investigation would be made on complaint, complaints would be made very much sooner?—A. Well, they have known for many years that the Department of Justice is in charge of the administration of the Act, and they make plenty of complaints, but usually as I say they come at a late date. If the superintendent is not in a position to know what is going on by reference to his files in a routine way, I do not see how he is going to be of much use.

Mr. FRASER: Do many of these complaints come from the bankrupt himself?—A. Oh, practically never.

Mr. KENNEDY: May we take it then that it is your considered view that the amendments should make it obligatory on the supervisor to investigate all cases—

The CHAIRMAN: No, permissive.

The WITNESS: Permissive is all I had in mind.

By Mr. Kennedy:

Q. I am asking in my own way. Is it your view that the amendment should provide that it shall be obligatory upon the supervisor to make investigation of all complaints, and that in addition thereto he be empowered by the Act to initiate investigations of his own motion?—A. I would not say I would make it obligatory on him to investigate every complaint, because I may say that quite a proportion of the complaints made have no foundation. That appears so almost on the face of it.

Q. From a practical point of view, if a supervisor is appointed and does not investigate a complaint upon request, will he not then be in a very awkward position?—A. Of course I would not think he would be free to ignore a complaint.

Q. What would the objection be to making it necessary for him to investigate upon request?—A. I would not have any objection to that except that there are a lot of people who make complaints—for instance I had a case just the other day, rather interesting. A wage-earner in Toronto wrote a letter to the Department of Justice complaining that he had not been paid something that he claimed was coming to him in connection with a bankrupt estate at North Bay. He made other complaints about the administration of the estate. We wrote to the trustee and he made a very comprehensive answer. We simply passed that back to the complainant, thinking that would satisfy him. But he came back with a further complaint, and we passed that back to the trustee. He then got on the train and came to Ottawa at his own expense, and satisfied me in five minutes that his administration of that estate had been absolutely satisfactory.

Mr. FRASER: I would consider that an investigation.—A. Yes in that way. I would not see any objection to changing this provision which authorizes him from time to time to make or cause to be made such investigation as he deems expedient. It might do no harm to add to that that he should make them on complaint. But I am sure he would do that in his own interest, in his own way.

The CHAIRMAN: The practice has been pretty well established in the Department of Insurance, I think, where complaints are lodged every day by

people who feel that they have not received adequate compensation, and the superintendent investigates in his own way, but it does not necessarily entail an attendance.

Mr. TURNBULL: The suggestion has been made to me that possibly an officer in each district, appointed by the superintendent of bankruptcies, might be the only trustee for the whole district. In that way it is suggested that this competition for estates, this overcharging you talk of, might be avoided. Has the Department considered that?

The WITNESS: I considered it, I cannot say my Minister did, he did not get that far. I had at one time a provision in this bill, before it was printed, which provided something along that line. It was to adopt to some extent the provisions they have in England. If the Committee would like I could tell them in a moment how they carry on the administration in England. I refer to that because everyone seems to concede that the Act in England does work extremely well.

In England and Wales they have the country divided into 50 districts. In each of those districts there is an official receiver. The majority of these are employees of the Board of Trade. In the less important districts the receiver is what they call a fee-paid official receiver; he simply receives what fees he can under the law. He is usually a solicitor or accountant. Of course he carries on his other business as well. The distinction between the two classes is that where there is an average of 60 or more cases in a year a salaried official receiver is appointed. In cases of less than that number there is a fee-paid official receiver. That official receiver of course has a monopoly in that territory, he handles every estate, subject only to this qualification, that if he estimates that the assets are in excess of £300 then at the first meeting of creditors, the creditors may, by a bare majority, supplant him by a private trustee. For estates of less than £300 it takes a majority of three-quarters. In actual practice all the small estates are handled by the official receiver, and about 100 out of 800 I think were the last figures I saw of the larger estates were handled by the official receiver, the rest being handled by private trustees.

In all cases where the Department handles the estates the fees go into the revenue. It is difficult to understand some of these statements, but roughly speaking the Government is out of pocket a small percentage. I think in the year 1930 it was about £8,000.

By Mr. Turnbull:

Q. It would not be if the officer handled all the estates?—A. No, but they say in criticism of such a proposal that the large estates usually involve carrying on the business for a length of time, and a different kind of administration than is the case with a small retail business, which is simply sell and get rid of. I am told that they think the Government officials perhaps would not be in a position to handle the very large estates.

Something like that might be done in this country. In a particular division you might appoint one person who would be the official trustee in that division. But all the other trustees would have to go out of business then, and they would not like that very well.

Q. The question is whether the estates would like it.—A. Well there are other difficulties of course, as compared with England. For example in England an official receiver can be appointed whose jurisdiction would cover one city, say Manchester, and he has plenty to do there. Here, particularly in some parts of the country, you would have one trustee in a very large area. But that is the only way you could carry on if you are going to pay him a salary, because you could not have a salaried man in every small town in the country. I am afraid it would be more expensive here than there for that

reason. The scheme contained in this Bill was to attempt to rectify the system we have rather than establish an entirely new system.

That, then, is the situation as regards supervision I think. The principal object is to bring about more uniform practice throughout the country in the management of estates by the trustees and in the exercise of the functions of the court officers, I mean the official receiver and the taxing officers and the registrars in the more purely legal matters connected with bankruptcy. There is an enormous variation in that side of the matter too. I am told that you find in one district you pay certain fees for certain services, and in another part perhaps only half that, although the same tariff of fees applies throughout the country. But it is administered differently. Supervision would have the effect of bringing about uniformity.

It would also speed up administration, because the trustee would be jogged up if he did not get on with the thing. That is what I mean by a routine supervision. If three or four months went by and nothing happened, I should think the superintendent would jog the trustee and want to know why he had not got forward with the matter.

Mr. KENNEDY: Have you formed any opinion as to what percentage, speaking in a general way, it would be necessary to levy upon estates to take care of the expense?—A. All I can say about that is that when this scheme was devised the Bar Association made an estimate. I do not know how they arrived at it, but they estimated that the amount realized in the previous year from the sale of assets, after secured creditors had been looked after, amounted to $14,000,000. Half of one per cent of that would be $70,000, which would be more than sufficient to carry on the supervision that they had in mind. In that connection it might be interesting to know that the supervision carried on by the Superintendent of Insurance, according to estimates for the current year, would amount to about $150,000. A very large part of the salaries included in that expenditure is for actuaries and people of that sort, who would not be required in connection with this bankruptcy business.

The CHAIRMAN: And they have trust and loan companies?—A. Yes trust and loan companies and insurance companies. They, of course, make an audit of those companies. No such thing is contemplated here. I understand the Superintendent of Insurance audits the books of those companies periodically, and also values the securities. I see an item here of $7,000 valuation of securities held by companies. The total expenditure contemplated under these estimates is $150,000. I spoke to Mr. Finlayson about this,—as a matter of fact it was suggested that he should undertake to carry on this supervision along with his own Department,—that the two might be worked together, that the auditors he has engaged in the investigation of insurance companies might be available for whatever investigation was necessary under this Act. I do not know whether that is possible. I asked Mr. Finlayson to consider whether it could be done, and he said two things: one, that it would cost a great deal less than $70,000 if it was done in that way, and second, that he would consider whether he could undertake it, and I have not heard from him. Perhaps the Committee might consider having him called.

Hon. Mr. LAPOINTE: Do you think that the suggestion of Mr. Kennedy and Mr. Clarkson, that the expense should be undertaken by the Government, has any chance of being entertained?—A. I have no information about that, sir. There are two things I think the Committee should be told about that, both of which are a little against the Bill perhaps. One is that in the ordinary course of things there would be no revenue from this source for about a year possibly. That is to say, supposing the act were passed, its operation would have to be postponed six months or so to give time for the superintendent to be appointed and give him time to make the necessary inquiries as to who should be licensed.

That I should think should take the best part of six months, and the Act would only apply to bankruptcies occurring after that date. So there would be a period of possibly a year before any revenue came in.

Secondly, I am bound to say,—I thought Mr. Clarkson would have mentioned it,—that larger estates will bear the burden of this levy, notwithstanding the fact that usually in the case of the larger estates the administration is fairly good. With a large estate you usually get a fairly good trustee.

The present Act involves no supervision over the trustee, except that at the end of his administration he is supposed to pass his accounts before the court. Actually in many cases I know he never does that. He takes his chance of not getting into any difficulty about that. Why the bonding companies do not insist I have never been able to ascertain, but I know that in a certain percentage, I will not say large percentage, he never appears before the court to pass his accounts.

By Mr. Kennedy:

Q. Does the trustee have to get his accounts passed before he can get his security discharged?—A. He does. I do not know how that works, I have never found out. He puts up a bond with the official receiver, fixed by him in some way for an amount related to the estates under his control. That bond relates to his entire administration, he pays the fee, and I suppose the bonding company does not follow him up.

Q. From my experience I understand they are anxious to get their accounts passed to get their security released.—A. I know that is true in many cases, but I have hear of quite a few cases in the last three or four years of trustees who have been indifferent about getting it done.

Q. Would you think the practice of not getting them passed is general?—A. My knowledge of this only comes from hearing people talk about it.

By Mr. Fraser:

Q. Is it possible to get a blanked bond?—A. We had that in connection with the first statute, it was fixed at $15,000. In many cases it was not sufficient, and sometimes it was too big. But many trustees are handling estates amounting to many times that sum.

Q. Does the Act require a bond in each individual case?—A. Yes, sir.

By Mr. Kennedy:

Q. As long as the trustee does not get his discharge in respect to an individual estate he would continue liable for the bond premium, would he not?—A. I rather imagine that they pay simply one premium. I do not know how it is in the case of the large bonds, but you see a lot of these cases are very small. I had one down in Quebec the other day, in Sorel I think. The bond was $500. It was put up by a trustee; subsequently the bonding company cancelled and we had a hard time getting the trustee to put up another bond. There was no way of getting at him under the present law. It was a small matter, but at the same time it was important to the creditors.

Mr. Spence: Are all trustees bonded now?—A. They are supposed to be, I hope they are. They are supposed to give a bond to the court when their appointment is made.

By Mr. Anderson:

Q. They could not cancel that bond at their own will.—A. Well, whether or not they could, they did, and the Official Receiver there quite properly notified the Department of the fact. We finally did succeed in getting another bond.

Q. Would not the practice be much the same as in the Surrogate court?—A. The fact is I am not very familiar with that practice.

Q. Well that is just what the bonds is given for, to secure the estate to those interested in it. And it is given for a large amount. As a matter of fact when a bonding company gives a bond it is given for the face value of the estate.

The CHAIRMAN: Mr. Anderson, I can tell you that indirectly you are touching on one of the principal difficulties that confronts the part of the country where this case arose, I think. That is the administration of the Act, quite apart from the legislation itself. I hope Mr. Varcoe is going to say something about that.

The WITNESS: Of course the trustee is not responsible for all the difficulties that arise under this Act. Creditors I think, generally speaking at this time, are disappointed in the results of the operation of the statute, the ordinary creditors I mean. But the ordinary creditor has never in my experience been thought very much of, everyone else has been thought of ahead of the ordinary creditor in connection with this statute.

Mr. SPENCE: Why does that happen?—A. You have got at present, apart from the secured creditors, the following persons coming ahead of the ordinary creditors; the landlord, the taxing authority, the wage-earner, the Workmen's Compensation Board, and the trustee in connection with his expenses and costs; five classes of creditors preferred over the ordinary creditor apart from the secured creditor. The secured creditors of course include the bank, if it has an assignment of book debts.

The CHAIRMAN: And the mortgagee?—A. And the mortgagee and lienholder. There is always a disposition for creditors to get themselves preferred if they can, that is natural.

Mr. KENNEDY: From a practical point of view, which if any of those classes of preferred creditors you have named would you suggest stand down and take the same chances as the ordinary creditor?—A. I think that is purely a matter of policy. I do not know that my opinion would be of much value. I might say that the Crown should stand aside, but—

Mr. SPENCE: Do you think the Crown should stand aside sometimes?—A. There is no doubt that occasionally the Crown or the taxing authorities, municipal or provincial or Dominion, neglect to collect taxes at the right time, and then come with a big claim at the end, perhaps after a period of years.

The CHAIRMAN: Priority is largely a matter of provincial legislation anyway isn't it?—A. I think in a general way Parliament adopted the schemes that existed in the different provinces in that respect. There have been perhaps some slight additions to the preferences.

By Mr. SPENCE: That is the great difficulty to-day. At many meetings I have been at, that there are so many deductions that the ordinary creditor gets scarcely anything.—A. I mentioned that because I do not want it to be thought that the bad trustee is responsible for all the criticism directed against this Act by the creditors.

Q. I do not think so.—A. I might mention several other complaints that I have heard of. The official receiver, as I have tried to make clear, is simply an official to bring about the appointment of a trustee of the creditors' choice. Nevertheless is was contemplated by the Act that he would to some extent guide the selection of that trustee. In the first place he has the choice of the custodian. If a custodian who he knows to be unfit to be trustee comes forward to be appointed it should be his duty to reject that applicant. I know in some parts of the country that is done. In Ottawa for example, I think it would be almost impossible for a custodian to get into office who is not reasonably fit to carry on the responsibilities of his administration. In other parts of the

country the official receiver treats his duties in that respect as purely formal and accepts whoever is put forward by some creditor, or perhaps by the debtor. Of course, in the vast majority of cases the custodian becomes the trustee. The supervision of the official receiver has never been undertaken at all, he has simply carried on in his own way.

Mr. KENNEDY: Assuming it is very important to start at the top with a thoroughly reputable official receiver, are there complaints at all as to any of the official receivers, without naming them?—A. Yes there are, there have been complaints. Perhaps I can enumerate what they are as I know some of them very well. I know one case where an official receiver insisted that he would furnish the bond, that instead of getting a bonding company he would put up the bond and take the premium. That practice went on for some time. He was finally dismissed from the office.

Mr. SPENCE: He was a bookmaker.

A. Another case I know of, the official receiver conceived the idea that he would become the trustee, and in each case he put up a dummy, and himself enjoyed whatever profits there were. I do not know that in that case the administration was particularly bad, but it certainly was in conflict with the intention of the Act, because the Act says distinctly that any person but the official receiver can be a trustee.

By Mr. Kennedy:

Q. Are there many complaints as to official receivers playing favourites in the matter of appointment?—A. I have heard of it. Those have only come to my attention in an indirect way. I have heard that the official receiver influenced the appointment of solicitors for example, that he selects a custodian of his own choice for reasons of favouritism as you suggest.

Q. What influence could he have on the appointment of the solicitor?—A. I have heard of one case where the official receiver said to the custodian: I will appoint you as custodian if you will employ Mr. ..... as solicitor.

Those things are bad enough, but I think that sort of misdoing is not frequent. My principal criticism of the present scheme is that a great many official receivers simply take no responsibility whatever for the appointment of the custodian. That is a more general sort of criticism than the other.

I would think in that connection that this Bill should be amended in a certain particular. When the Act was first drawn up the Bar Association had a provision in to provide that the superintendent would have power to inquire into the operation of the act by official receivers and other people. For some reason that was dropped out of the draft as finally submitted by the Bar Association. The provision was in section 36 A, paragraph H—I am speaking of the first draft they submitted. It provided for an investigation or inquiry by the superintendent into the conduct of official receivers. I think he should have some power of that kind, for the purpose of bringing about uniformity at any rate.

However, that perhaps would not be of vital importance if the trustees were licensed and effectively supervised by the superintendent, because you would hope that the objectionable type of trustee would be excluded from the business. But it may be necessary to introduce an amendment to replace that provision.

There is another criticism frequently made, that is that the taxing masters who tax the statements of the trustees and of their solicitors vary a great deal from one part of the country to another. In one part of the country a trustee can get away with more than he can in another part.

Q. Would not that be governed by the tariffs in the different provinces?—A. Well the tariff only relates to the legal fees. There is a tariff of charges that the custodian can make for sending out notices, etc. I suppose as far as that goes it is carried out, I do not know. But I am thinking of the case where a trustee

comes forward with a statement of disbursements. Unless the taxing master insists on proof there is practically no check on the trustee under the present practice.

In that connection the provision of this Bill should be referred to which requires the taxation of the trustee's account in all cases. You may remember that Mr. Clarkson objected to that yesterday. He said he thought that if the creditors and inspectors were satisfied, there should not be any obligation on the trustee to have his disbursements taxed. But I think this amendment would have a beneficial effect.

By Mr. Spence:

Q. Is there anything in the Act at the present time to prevent a man who is in financial difficulties making an assignment to one of his chief creditors, or is that done at all, in order to save some money for the creditors?—A. Such an assignment may not be an assignment under this Act; and it would be probably, I should think in most cases, prohibited by the Act. That is, it would be a preferential disposition of his assets, which the statute prohibits. I think so. I may say in connection with this question of expenses, the expense of the supervision, that Mr. Reilly, the registrar and taxing master in Toronto, spoke of. Mr. Reilly has had a very wide experience in the operation of this Act, and he made a statement to the committee that supervision such as this Bill provides would increase the dividends he thought by five cents on the dollar to the ordinary creditor.

Now, I may say that representations were made for the amendment of the Act to exclude farmers from the operation of it. The department simply did not form any opinion as to whether that should be done or not, leaving the representations to be made to this committee, and the committee to decide whether that should be done. It is suggested that the farmers in some provinces have suffered a diminution in their credit by reason of the existence of the statute.

By Mr. Kennedy:

Q. What is the practice in England?—A. There is a farm reserve in the Act in England. I did notice 462 farmers became insolvent in 1928, 345 in the next year, and 350 in the next year.

By Hon. Mr. Lapointe:

Q. You heard Mr. Grundy say, so far as the western provinces are concerned, he does not think there is any need of the Act applying?—A. Yes, I heard that. So far as I know that is a correct statement.

Q. Mr. Clarkson says the same in regard to Ontario?—A. Yes, I think he did.

Q. I know that in Quebec the unanimous opinion is that it should not apply to the farmer?—A. Yes, that is quite true.

Q. Do you see any reason why it should be any different?—A. It may be that the farmers in the west are finding themselves sufficiently protected under provincial legislation at this time, for certain reasons. But they may some other time find it necessary—I know at one time the western farmers were favourable. I think you yourself, sir, said yesterday—

Q. Yes, I was rather surprised.—A. There is a special provision in this Act relating to farmers, as to the administration of their estate, if I can find it.

Mr. GRUNDY: Section 35.

The WITNESS: Is that the one about the trustee?

Mr. GRUNDY: Yes, section 35.

The WITNESS: Yes. Section 35 of the Act, as it now stands, provides, "notwithstanding anything contained in this Act, if the Lieutenant Governor in

Council of any province authorizes any officer of the provincial government to act as custodian and trustee under this Act, the official receiver shall in the case of any assignment by a person engaged solely in farming or the tillage of the soil, appoint such officer as custodian." I do not know whether that has been taken out of it or not.

Mr. GRUNDY: It is in Manitoba.

Mr. CARMICHAEL: That would mean that a Debt Adjustment Board could be appointed under this section, if so desired.

The WITNESS: Yes, that is correct.

Mr. GRUNDY: He is the officer.

The WITNESS: It was suggested the Debt Adjustment Act itself made necessary the placing in the Act—

Mr. SPEAKMAN: But of course, the Debt Adjustment Act itself does not provide for the clearance of any farmer. It simply provides that a certain arrangement be made, or time be given. It does not make provision for any to go into bankruptcy, or any discharge of debts.

Mr. SPENCE: It does not altogether take place with the Bankruptcy Act.

Mr. SPEAKMAN: It is an individual moratorium, lasting over a certain period of time.

By Mr. Anderson:

Q. May I ask if there were any representations made on behalf of the farmers at all?—A. Yes, the province of Quebec sent representations. As I say, the department was simply not in a position to form any opinion about it; it was felt it was a matter that should be left with this committee.

Q. Was there any from the western farmers at all?—A. Not that I know of.

Hon. Mr. LAPOINTE: Was somebody invited to come before this committee and express an opinion?

The CHAIRMAN: I have sent communications to *L'Union Catholique des Cultivateurs de la Province de Québec*. Their head office is in Montreal.

The WITNESS: There is a provision in this act to which I should like to call the committee's attention (because there may be a difference of opinion about it, and it has not been mentioned so far. It is contained in clause six of the bill and introduces a new provision to section 9 of the act. I shall just read the clause as it stands in this bill:

> 6. (1) Subsections five and six of section nine of the said Act are repealed and the following are substituted therefor: "(5) Immediately after the acceptance of the authorized assignment the official receiver shall appoint as custodian a licensed trustee whom he shall, as far as possible select by reference to the wishes of the most interested creditors, if ascertainable at the time.
>
> (6) Upon the appointment of the trustee by the creditors, the official receiver shall complete the authorized assignment by inserting therein as grantee the name of such trustee, and such assignment shall thereupon, subject to the provisions of this act, and subject to the rights of secured creditors vest, as of the date of the acceptance and filing of the said assignment, in the trustee, all the property of the debtor, and in any case of change of trustee, the property shall pass from trustee to trustee without any conveyance, assignment or transfer whatever.
>
> (2) Section nine is further amended by adding thereto the following subsection:
>
> (8) If the Official Receiver is unable to find any person who is willing to act as custodian, he may, after thirty days have elapsed from

the date of the filing of the assignment and after giving the debtor seven days' notice of his intention, cancel the assignment, whereupon the said assignment shall cease to have any effect under this Act.

Now, that last section was introduced. It was not a recommendation made by the Bar Association, but it was made by a variety of other people from time to time, over a period of years, and it would have this effect. If a debtor makes an assignment and has reached the stage where he has no assets, or assets of such little value that the custodian or trustee would not undertake to administer his estate, then the official receiver would cancel the assignment, and he would be back in the same position he was before.

Now, the view in favour of that position is that if a debtor lets himself get that far, he should not be entitled to the benefits of the act; that is to say, a discharge of his debts. Another view in favour of it is that the act simply does not provide any machinery for administering his affairs in such case, and reasonably enough, the trustee or custodian is not going to accept office unless he is going to be paid, at least, his disbursements. I may say that that section was the result of a situation which partly, at least, developed in one province, where a number of wage earners, in receipt of fair enough wages, in order to defeat their creditors, would file an assignment, and the assignment would operate as a stay of proceedings, and the debtor, of course, did not get a discharge of his debts. All proceedings by way of garnishee or otherwise were stayed against him. There was a good deal of criticism about that situation until it was pointed out to the creditors that they could apply to the court and have the proceedings proceeded with by leave; and that has been done since that time. Nevertheless, the official receivers have reported occasionally assignments are made to them and they cannot find a custodian, and that therefore they are simply helpless. They do not know what to do. This amendment would provide for clearing the record after thirty days, on seven days' notice. I do not propose to go through all of the provisions of the act at this time, unless the committee wishes.

By Hon. Mr. Lapointe:

Q. Are you going to be present at all meetings of the committee?—A. Yes, I am. That is why I thought it might be better to deal with two or three things that occurred to me now as requiring explanation. How, clause No. 32 was objected to by Mr. Clarkson yesterday—I think it was clause No. 32—no, that is not the one.

Q. He objected to clause 26, the filing of documents.—A. Well now, as far as that goes, that really relates to what I had to say earlier. I think if there is going to be any supervision at all, those documents must be filed with the superintendent. I think he must have some way of knowing how things are going, if he is going to be in a position, for example, to renew a licence. If he is going to renew the licence to each trustee, he must known whether that trustee has been efficient in carrying out the business that he has had to do.

By Mr. Speakman:

Q. I think Mr. Clarkson's objection was this; that unless the superintendent had a large staff, he would be unable to examine into those documents, and they would simply be accumulating in an increasing quantity, and an enormous responsibility would be thrown upon the superintendent, if anything went wrong, a heavy responsibility which he could not discharge. As he said himself, it would simply result in an accumulation of unused documents, that threw the responsibility upon the superintendent, which responsibility he could not discharge without the aid of a very large and costly staff?—A. I understand that. Al-

though I do not believe the staff would have to be as large as that, but on the other hand, one must bear in mind the reputation of the superintendent is at stake in connection with this. He has to produce results, or he is going to be criticized. He is in just the same position as the Superintendent of Insurance would be if he allowed the administration of his act to get out of hand.

By Mr. Kennedy:

Q. Don't you think there is a danger of over-regulations for business in general?—A. I quite agree.

Q. And instead of improving things, you are really handicapping them?—A. That still raises the question of this 1923 Act. I was the one most strongly in favour of leaving creditors to do everything the way they liked; leave it entirely in their hands, with no regulations or supervision at all except of a formal character required for the appointment of the custodian, and passing of the trustee's account. But it has not worked, that is all.

Q. It has not worked, and you are in favour of going deeper into the matter of regulations?—A. Well, I do not want to appear as an advocate of this scheme. I want to tell the committee what I can see in favour of it. Remember, this is a scheme of the Bar Association, and it is regrettable that they themselves are not going to be represented here, because they are in many ways better able to speak for themselves than I am able to speak for them. They are responsible for it. All I am concerned with is trying to tell your committee the things that are to be said in favour of this scheme. I have not been able to form any very safe opinion as to how many people will have to be employed to operate this act. As I conceive it, a staff of a superintendent, two moderately paid assistants and half a dozen clerks and stenographers could do the whole thing.

By Mr. Carmichael:

Q. Did I understand you to suggest the Superintendent of Insurance might possibly handle this?—A. Well, I cannot speak for him. All I can say is I spoke to him about it, and that he did not say he would not; he said he would consider it.

Q. Naturally, if it could be handled in connection with that there would be some increase in staff.—A. Very small. He said he would have to have several additional people on his staff; he could not say just how many. You see, he has a number of accountants and investigators, and as I understand it, they are scattered along the country. They are available in different places, perhaps to do the same sort of work contemplated by this act.

Mr. KENNEDY: Might I ask, Mr. Chairman, if Mr. Finlayson is likely to be called?

The CHAIRMAN: I think Mr. Finlayson will be called.

The WITNESS: He could tell you more about what would be required in the way of staff than anybody else.

By Hon. Mr. Lapointe:

Q. How can he, he doesn't know the operation of the Bankruptcy Act at all.

The CHAIRMAN: I think he knows, Mr. Lapointe, the number of bankruptcies, and I think we will have witnesses here who can give us a pretty correct idea of the number of bankruptcies that would require very much supervision. We all hope, as the number of bankruptcies have increased during the last two years, there will be a diminution of them when times improve. That would mean the work would not be as great in normal times as it would be in times of depression.

The WITNESS: It is fair to say, Mr. Chairman, that the greatest expenditure, I would think, would be made in the first two years, on account of the fact

that a large number of applications for licences would come forward, and each one of those would have to be given some kind of investigation to determine whether he should get a licence or not. For example, there are 120 licences in Montreal, 120 carrying on business in Montreal, and it is said that 20 would be sufficient, having regard to the experience in other parts of the province of Quebec, and other parts of the country.

Now, there is another provision that was mentioned by Mr. Clarkson. That is the provision contained in clause 32 of the bill, "No person shall be eligible to be appointed or to act as an inspector who is a party to any action or proceedings by or against the estate." That suggestion was made to me, or that proposal was made to me by several solicitors in different parts of the country, who have found inspectors were appointed, against whom the estate was proceeding, or who were suing the estate; and those people utilized their office or used their office for their own benefit, in that connection, rather than for the benefit of the creditors of it. I cannot myself see any objection to excluding from the office of inspector, a person who is carrying on a lawsuit against the estate, or who is defending one.

By the Chairman:

Q. Well, where is the difference in principle. I am a creditor or I would not be interested in the bankruptcy. I am a creditor whose claim is not recognized, and am seeking to enforce it by legal means, yet you disqualify me as a creditor.—A. Well, in the ordinary case of a creditor whose claim is not being contested, he stands in the same position as all other creditors. His interest is the same as theirs. But if he has a claim which the trustee disputes, his interest is not in all respects the same as that of the other creditors. He may influence the administration of the estate. It is not a very important matter, probably, but I wanted to make that clear.

By Mr. Speakman:

Q. As a matter of fact, Mr. Clarkson did not give any real objection. He simply said he did not think it was necessary. He brought to it no definite objection. He said he did not see the logic of it, and did not think it was necessary. He did not point out any probable harm that would result.—A. Well sir, I do not know that there is anything more I can say.

By Hon. Mr. Lapointe:

Q. May I ask you a question?—A. Yes, I would be very glad if you would.

Q. I see that the draft bill submitted by the Canadian Bar Association placed the administration of this act on the Minister of Justice. What is the reason for transferring it?—A. The reason was the position of superintendent would not be in any sense a legal position. I mean, it would not involve any real duties; although legal questions would arise, of course. There is no reason for his being a lawyer, for example.

Q. But his work will largely consist of the winding up of estates, the work of a trustee, which is legal, or judicial in many respects.—A. He would require—

Q. There would be court proceedings, which would involve a knowledge of legal matters.—A. He would require legal advice, of course. I must say that I had in my mind, when I suggested that, that Mr. Finlayson might take it on, that very thing. That is what was in my mind. It would be an office so much similar to the one he has.

By the Chairman:

Q. I suppose also the fact that a similar department is under the control of the Board of Trade, in England, may have had some influence upon the change. I speak of the Insurance Act.—A. Yes.

Q. Under the Board of Trade?—A. Yes.

Q. In England?—A. Yes.

Q. Assuming that the superintendent is appointed and that trustees are licensed, would it not be necessary to effect an amendment to the Winding-Up Act, to the effect that liquidators should be licensed trustees?—A. Yes, I think that would be a desirable thing.

Q. Otherwise you would have all the companies in process of liquidation seeking to escape from the effect of this act, via the Winding-Up Act.

By Hon. Mr. Lapointe:

Q. I think it will be desirable to make a change.—A. Yes, I think so too. There will be several other minor amendments too that have come in in the suggestions that have been made since the bill was drafted. I shall not take up the committee's time in discussing them now.

The CHAIRMAN: Thank you very much, Mr. Varcoe.

W. L. McQUARRIE, called.

By the Chairman:

Q. Will you indicate briefly your experience, and the part of Canada in which you have had this experience, and then if convenient, follow the little memorandum which has been sent to you. It may expedite the work of the committee in the weighing of your evidence.—A. Mr. Chairman and gentlemen of the committee, I come from Saskatchewan, where I have been a resident for some 33 years, having come from the province of Ontario originally. I happen to be very familiar with the work of the retail merchants in the province, as I have been their provincial secretary for the last ten years, and for some five years before that time, I was field man for the Retail Merchants' Association in the province of Saskatchewan. Working in conjunction with the merchants, you can understand that we have come in close contact with the Bankruptcy Act, and how it has worked out in that province. We have here to-day our Dominion president and our Dominion secretary, who, I hope, will have the opportunity to say something to you. But I want it very clearly understood that I am here only on behalf of the province of Saskatchewan. We have with us also one of our officers, Mr. Crimp of Saskatoon. We come here to-day at the express request of our membership, which consists of about 2,300 members in the province of Saskatchewan. That takes in the whole area of that province.

Now, gentlemen, I would just like to say first of all, that along with us you recognize that amendments to the Bankruptcy Act is a subject of very keen interest to many people. As you know, throughout Canada we have about 145,000 retailers scattered throughout the length and breadth of this country, and through one practice and another, particularly in our province, they have been in the habit of assisting people who are very close to them, the people who are next to them, and that is the farmer. They have so much assisted him, that there are various figures given as to the amounts they are carrying on their books. The figures that I believe are nearest correct are about $25,000,000. Through our organization we are hoping to get more definite figures. There is no doubt that the retailer has been carrying the farmer for a very large amount of money.

By Mr. Speakman:

Q. In the province of Saskatchewan?—A. In the province of Saskatchewan alone. Now Mr. Chairman, in connection with that I might say with one crop failure coming on, it puts some of those merchants in a position that they cannot meet their accounts as they come due regularly; with two crop failures, it makes quite a larger percentage of merchants who cannot meet their accounts

as they come due. This Bankruptcy Act that you have before you, the 1923 Act, states that a person commits an act of bankruptcy when he fails to meet his liabilities generally as they come due. Often, through no fault of the merchant, he finds himself in that position. This Bankruptcy Act, and the amendments that have been suggested to it by the Bar Association, are very fine. I quite realize that the suggestions I am going to present to you from our province to-day contemplate a complete change in the principle of the Act. It will require changes all the way along the line. But I do submit in the framing of the act, as it stands to-day, there is not one clause or one phrase or one thought that has been given to the retailer, who has carried this burden and who finds himself in this position. There is no thought whatever of that man. He has been given no consideration under this amendment. I submit, gentlemen, and you are quite aware, that there are many merchants who have carried along in our province for at least twenty years. Then, this condition comes along. It is not all on account of the depression; it is sometimes due to one reason or another. They have what might be termed frozen assets. They have a large volume of accounts on their books, accounts which may be called frozen assets. They have certain creditors, and these creditors are the people they have helped along. They have given credit to them, and due to the position in which they find themselves, these very persons have the right, under the present Bankruptcy Act, to force that man into making an assignment. They can take a receiving order out against him, if he does not voluntarily assign himself. Many of the creditors say, "No, we are going to give this man a chance; we are going to let him carry on." But one or two unreasonable creditors can force him into an assignment. I am not going to take up the time to give you cases, but we have had cases in our province of men who have been carrying on business for twenty years—

Q. Is it your suggestion that those debtors be given an extension of time when they cannot pay?—A. Our suggestion is this, Mr. Chairman: when a person finds himself in the position that he cannot meet his accounts generally as they become due, he should be enabled to go to some company or institution, duly licensed and authorized by the government to transact that kind of business, and make a voluntary assignment to that company or firm or institution, and that they should be his trustee in bankruptcy. Our reason for that contention is that sometimes—

Q. Do you mean by that your own association?—A. I beg your pardon?

Q. Do you mean your own association?—A. Oh no, sir.

Q. Do you want a suspension of the Bankruptcy Act in the province of Saskatchewan?—A. No, not at all, sir. Simply that when this person finds himself in the position that he cannot meet his accounts as they come due, he be permitted to go to any institution or company or firm licensed and authorized by the government for carrying on bankruptcy business, handling bankruptcies, and make an assignment.

Q. Well, he can do that now.—A. He can do that now, but they do not have to be necessarily his trustee in bankruptcy.

Q. It is a matter for the creditors to decide.—A. The creditors have the whole say. That is the whole trouble. Often times the creditor that forces this assignment, or forces this man into bankruptcy, is the man who has sued him.

Q. Certainly. That is the very genesis, and the very reason for bankruptcy. —A. Yes.

Q. Are you advocating the suspension of the Bankruptcy Act in your province?—A. Not at all, but we do advocate that the person who finds himself in a position where he must make an assignment, or that he cannot meet his accounts as they come due, be permitted to go to some authorized trustee in bankruptcy, and not have to have his business handled by the people who forced him into bankruptcy, necessarily. They are crowding him; they have forced

him into bankruptcy, and we believe that often times the merchant class, if they could go to a firm or an institution or an authorized trustee that was not, at least, unkindly disposed towards them, they could carry it through.

Q. Let us understand one another, Mr. McQuarrie. Bankruptcy is a means by which a person unable to meet his liabilities as they fall due, makes an abandonment of his property, or a receiving order is issued against him for the benefit of his creditors; and under the advice of the court, the creditors determine how that estate shall be wound up. Now, are you advocating that this cardinal principle of bankruptcy be suspended in Saskatchewan?—A. No. What I would like to say—I am sorry if I have not made myself clear, Mr. Chairman—is that the person who finds himself in deep water, be enabled to go to any trustee——

Q. He can, now.

By Mr. Spence:

Q. Have they not authorized trustees in the province of Saskatchewan?—A. Yes, there are people doing that work. But the trouble is, Mr. Chairman, the creditors have the sole right——

By the Chairman:

Q. Certainly.—A. —to say who shall handle the estate.

Q. Yes; that is what bankruptcy means.—A. And very often those creditors are the people that have forced him into bankruptcy, and they are unkindly disposed towards them; whereas, if he were able to choose a trustee who would at least be not against him, he could work out his own salvation, probably with a full return to the creditors, and he might get something for himself.

Q. Is that a fair statement of your proposal? It is your opinion that the affairs of a debtor who cannot pay his accounts as they fall due should be placed in the hands of a well-disposed and benevolent third party, who shall administer them for a period of time, and that the creditors shall be precluded by law from realizing upon the assets until that time has elapsed?—A. No. I would not say we would be prepared to go as far as that. I would say that our contention is that at the present time, the man who assigns has no say whatever as to who shall handle his estate; notwithstanding the fact, Mr. Chairman, that he may have a very large interest in that estate. If he were given a little time, and if there were not a ruthless winding up of the estate——

Q. Are you advocating a type of moratorium?—A. No.

Mr. Speakman: As I understand it, Mr. Chairman, the suggestion made by yourself was just in line with our present Debt Adjustment Act in the three Prairie Provinces, which is already in existence. That is, a limited moratorium. I do not understand Mr. McQuarrie to be suggesting that. I understand McQuarrie's suggestion to be, that instead of the creditor having the sole right to designate the trustees, the debtor be taken into consideraion also, and have a voice in the choice of the trustee who shall administer his affairs.

The Witness: That is exactly what we contend. I want to go a little further than that in so far as the Debt Adjustment Act is concerned. We do suggest this Act should be amended and, "shall not include any person or persons who have been given the benefit of a Debt Adjustment Act or any similar Act of any province." I noticed in the proceedings yesterday you have heard something about the Debt Adjustment Act in the province of Saskatchewan. I am not familiar with what has taken place in that law in that province; but it seems to me it might be desirable, where there was a Debt Adjustment Act in any province that the merchants be brought under that and the Bankruptcy Act might not apply.

By the Chairman:

Q. Will you permit me, Mr. McQuarrie, Mr. Speakman has summarized your proposition. Have you an amendment to some of the sections of the Act, which embodies your proposition by which the debtor would be given a voice in the administration of his bankrupt estate?—A. Yes. This is it. That any person who finds himself in a position of being unable to pay his liabilities as they become due, should be enabled to go to any company or institution authorized and licensed by the government to transact such business, and make an assignment in bankruptcy to that company or institution, and that company or institution should be his trustees in bankruptcy; and further, that the provisions of the Bankruptcy Act be so amended as to give effect to this recommendation.

By Mr. Spence:

Q. Can a debtor in the province of Saskatchewan voluntarily make an assignment without consulting the creditor?—Yes, sir.

Q. What else can we do for you?—A. And a custodian appointed, but the thing is the creditors say, "We want to have control of this affair."

By Hon. Mr. Lapointe:

Q. Is it not logical that it should be so? He makes an assignment of the property for the general benefit of his creditors, not for his own benefit.—A. Quite true.

Q. For the benefit of the creditor. Surely they are the people, then, who should have the say.—A. Notwithstanding that, sir, in our province very often, a merchant, when he makes such an assignment, has large interests in his estate, and oftentimes that interest dwindles, and he has nothing, and the creditors do not get anything out of it. We believe it is better for the trustee as well, a trustee that has a satisfied customer time after time. It is very hard for them to be impartial, but if the bankrupt or the assignor chooses the trustee, that trustee could be impartial, because then he does not expect any further repeat business.

By the Chairman:

Q. You see, Mr. McQuarrie, the principle of bankruptcy is that the man's estate shall be divided among his creditors. It takes everything from the debtor, and if the bankruptcy is honest, it gives him a clearance of debts that he has not paid.

Mr. SPEAKMAN: Just one moment, Mr. Chairman. Assuming, in the case that Mr. McQuarrie has mentioned, the debtor is unable to meet his liabilities at the moment as they fall due, but his general assets in ordinary times might be far beyond the amount necessary to satisfy the creditor. In other wards, if the creditors were satisfied in normal times there might be an equity left.

The CHAIRMAN: I think, Mr. Speakman, that what you are suggesting has to do more with the delay within which the act would be brought into operation, than with administration of the act itself.

Mr. SPEAKMAN: No, I am not arguing one way or the other. I am endeavouring to explain Mr. McQuarrie's point. I have some knowledge of the situation and position in which many of these farmers find themselves, being a farmer myself, with assets which in ordinary times exceed, and far exceed their liabilities. These assets have dwindled on account of conditions, lack of crop and the general depression. They are unable, in spite of those assets, to meet the payments as they fall due. As I understand Mr. McQuarrie's suggestion, it is not simply an extension of the Debt Adjustment Act; his suggestion is that if a man must go into bankruptcy, voluntarily or otherwise, the estate be so administered to leave an equity which might be there after satisfying the creditors.

The simple change he is suggesting is, that instead of the creditors themselves taking the estate as their own, which it is under the bankruptcy law, and designating the officers who shall administer it, it shall be administered for the benefit of all concerned. Under the suggestion, the debtor shall have the right to designate the official trustee who shall then administer the estate, not only with a view of paying the creditors, but with the view of conserving for the debtor, if that may be possible, the residue of equity which may be is.

Mr. SPENCE: That is always done.

Mr. SPEAKMAN: The suggestion of the witness is that it is not done frequently in the province of Saskatchewan. I am not arguing. I know the whole purpose of the law is to wind up the estate. Mr. McQuarrie's suggestion is, that with a little more mercy, a little more might possibly be conserved for both.

The WITNESS: That is our contention.

Mr. SPEAKMAN: It might be done by a sympathetic trustee, who could be designated by the debtor, on account of his knowledge of the company.—A. That is exactly what it is.

The CHAIRMAN: The situation described as "frozen assets" unfortunately is not local to Saskatchewan. It pervades the whole Dominion.

The WITNESS: Could I say further that often in cases where a trustee takes charge of the estate the merchant himself is dispossessed and put out of charge, and the assets he has are very much depreciated owing to the change of management and control, more so than they would be if the estate were continued under the management of the merchant, but with supervision.

By the Chairman:

Q. There is already provision for that in the Act. There is the opportunity for a compromise, for carrying on with deferred payments. Before you close on this point, have you considered the possibilities of the Act as it now stands?—A. I think I made it clear in my remarks at first that if you accepted our suggestion it would require quite a revision of the general principles of the Act. The Act as it stands today is an Act entirely for the creditors——

Q. Of course it is, that is what bankruptcy is.—A. Yes I understand that, but notwithstanding that, very often the merchant has a very considerable interest in the estate, often times much more than any particular creditor. I am going to cite a case; one of our merchants in Saskatchewan came to me and I asked him just what his position was; he was not exactly clear. I said to him: You better go home and let us have a complete statement of affairs. He had a statement prepared by his accountant, and it showed he had a surplus in that business of $110,884, after writing off a lot of accounts that he probably should not have given credit to. He held a lot of good accounts, a good store, but he could not meet the bills as they became due, he had no money. He said: I do not think I should have to make an assignment, I just need a little time. He wrote a letter to his creditors, and 75 per cent of them came back and said: We are satisfied to give you an extension to the 31st of December. You have a meeting of your creditors after that and let us have a statement. However, two of his creditors said: No, we think you will have to make an assignment. And they forced this man into an assignment. He had that surplus, I will not say it was all good, but there was a great deal of it good, and he only owed $19,000, which was secured to his bank, and between $60,000 and $70,000 to his trade creditors, and he had this surplus of $110,884 after cutting off a lot of dead wood, and it was a going business. He managed the business himself, he and his wife. They had built up a business of about a quarter million.

It was placed in the hands of a trustee, and now he is out of the store, his family is out, and there has been one dividend paid of 10 per cent, and I think

everyone who knows about that particular estate, and there are many of them, realize that if he could have had some supervision to guarantee to his creditors that there was a distribution of all the money pro rata and fair and square, this man would probably have been out of the woods very shortly.

We submit that there should be some recommendation made for an amendment providing that a person who has to make an assignment might be permitted to go to the person that you designate as trustee, those authorized and licensed by the Government to accept that kind of business, and that the creditors who force him into bankruptcy should not be the people that control and say how the estate should be wound up, because in the days and years gone by it has often been very ruthlessly done.

By Mr. Carmichael:

Q. Does the present Debt Adjustment Act of Saskatchewan apply to merchants in that province?—A. No, Mr. Carmichael, it does not. The last word I had from Saskatchewan as I came through was that the Committee on Debt Adjustment were recommending to the Legislature that the merchants should be brought under it.

Q. Is not that a way around? The present situation in Saskatchewan is just a temporary one, brought on through the unusual drought conditions. Would not an amendment to the provincial Debt Adjustment Act overcome the evil you speak of?—A. It would help for the time being, but we submit that this condition is not just temporary. A merchant, the person who has had to make an assignment has been up against this difficulty ever since the Bankruptcy Act came into effect. The first bankruptcy act permitted a man to go to any person and make an assignment. We do not contend for that. We believe it is the right thing that the Government should supervise, and that there should be certain people authorized and licensed, and if they do not conduct their work fairly and squarely their licence should be stopped. But since it is placed entirely in the hands of such persons, the man who makes an assignment has no consideration, and oftentimes a life-time's earnings have been ruthlessly destroyed.

Mr. Speakman: It seems to me that the case cited would fall exactly under the terms of the Debt Adjustment Act, if that were extanded to cover urban dwellers, and might carry for a term of years, as it has in many cases in Alberta.

Mr. Carmichael: And in addition, if section 35 of the present Act were amended to include merchants as well as those engaged solely in farming, then the Debt Adjustment Board could come in as the medium for handling merchant's assets.

By Mr. Fraser:

Q. Is it your suggestion that wholesalers are abusing the privilege of the Bankruptcy Act? Is that a fair conclusion from your remarks?—A. I did not make any mention of that.

Q. But I conclude from the results you speak of that you think the present Bankruptcy Act to be unduly hard on retail merchants. Is that a fair conclusion?—A. They have suffered very harshly, they have been ruthlessly dealt with.

Q. In connection with that case you cited, the $110,000 surplus, all the creditors were in favour of giving the debtor an extension of time except two, you say. What proportion of his debts were due to those two firms?—A. Those creditors had about 35 per cent I should say. They were two of the larger creditors.

The Chairman: But anybody with a debt which exceeds $500 may put the debtor into bankruptcy if he fails to pay at maturity.

Mr. Fraser: So that it would not be an abuse of the Act at all.

The CHAIRMAN: As I suggested to the witness, there are provisions in the Act for composition. 75 per cent of the creditors can impose their will on the other 25. If the merchant's position was what Mr. McQuarrie said, it would seem reasonable that 75 per cent of the creditors, had they had the same opinion about the estate that Mr. McQuarrie had, should have continued the man in business and accepted something for themselves. Apparently they thought it was a hopeless situation.

The WITNESS: That is just the point, they did continue the business, but as I pointed out, change of manager makes a change in the whole situation.

By Mr. Spence:

Q. I have never known a meeting of creditors that would ruthlessly wind up an estate in that way if they saw any hope of getting any money in the future.—A. They did not wind it up, they are running that estate yet.

Q. Well the whole thing is bad management from the standpoint of the creditors.

Mr. FRASER: In that case the man should still have his equity.

Mr. SPENCE: The man should not have lost his equity if there is anything in it.

By Mr. Butcher:

Q. Do you recommend that the business of handling bankrupt estates should be confined to trust companies? –A. No, not necessarily. I say they should be institutions, firms or companies licensed or authorized by the Government.

Q. What do you mean by institutions?—A. Well I used that probably for want of a better term, any firm or corporation or person that the Government would see fit to authorize and license. If they do not carry on as they should I presume it would be an easy matter to have that licence cancelled.

Q. But no objection to an individual licensee?—A. Not as far as we are concerned.

The CHAIRMAN: Mr. McQuarrie, is it satisfactory to you that this written statement of the position of the Retail Merchants' Association, together with the suggested amendments to the Act, be put into the record, and so will be available to the Committee when it considers your suggestions?

The WITNESS: I would like to add this, I omitted to say that we have also suggested that instead of the amount being $500 it should be raised to $1,000.

The CHAIRMAN: All right.

The committee adjourned to meet Friday, April 15, at 10 a.m.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 268,

APRIL 15, 1932.

The Special Committee on Bill No. 41, an Act to amend the Bankruptcy Act, met Friday, April 15, at 10 a.m., Mr. MacDonald (Cape Breton) acting chairman, presiding.

S. ROY WEAVER, called.

Mr. WEAVER: Mr. Chairman and gentlemen, it may save time if I read a memorandum which I have prepared setting out the views of The Shoe Manufacturers' Association.

Hon. Mr. LAPOINTE: The memorandum will be printed. I do not think you need read it all.

The CHAIRMAN: Do you want to add anything to what is in it?

The WITNESS: There will probably be some questions arising out of it.

Mr. SPEAKMAN: I think he ought to read his memorandum. First, who does this gentleman represent?—A. The Shoe Manufacturers' Association of Canada.

The CHAIRMAN: Will you tell us what that organization is?—A. That is all covered in the memorandum.

MEMORANDUM SUBMITTED ON BEHALF OF THE SHOE MANUFACTURERS ASSOCIATION OF CANADA.

The membership of The Shoe Manufacturers' Association of Canada comprises approximately 200 shoe manufacturing firms and wholesale shoe houses distributed throughout Canada and selling to merchants in all parts of the Dominion. These firms have a large interest in the matter of bankruptcy legislation. The Shoe Manufacturers' Association of Canada is somewhat closer to this problem than many other industrial or commercial groups as one of the principal services of the Association has been that of credit information and bankruptcy protection work. All bankruptcies in which our members are interested, as well as all proposals for informal settlements, are referred to the association. Claims and proxies are sent to our office and we work with trustees in whom we have confidence in an effort to get the best possible results for all concerned. In many cases the manager of the association is appointed joint-trustee, but solely as representative of the association and without any financial benefit to himself personally. This arrangement enables the association to keep a close check on the administration of estates of which its members are creditors and has worked out very successfully.

At the association's last annual meeting held in Toronto on January 12, 1932, a resolution was adopted unanimously asking that, in connection with the proposed amendments to the Bankruptcy Act, special consideration be given to the need for—

1. The establishment of uniformity of practice in the several bankruptcy jurisdictions throughout Canada;

2. A more effective regulation of solicitors' charges and trustees' fees; and

3. The avoidance, in the effort to overcome abuses under the present Act, of creation of an excessive supervisory organization which would increase the costs of bankruptcy liquidation, instead of reducing them.

The Shoe Manufacturers' Association of Canada recognizes the importance of an effective supervision of the administration of bankrupt estates and is thoroughly in sympathy with any efforts which may help to this end. In this connection, we believe that a Superintendent of Bankruptcy, if carefully selected and vested with authority to investigate and report to the Minister of any complaint in regard to any trustee or Bankruptcy Court officer, would be able to bring about a gradual correction of some conditions which at present are far from satisfactory. We are, therefore, fully in sympathy with the general purpose of those who have helped to formulate Bill 41. We are convinced, however, that the proposed legislation will be of little benefit unless Bankruptcy Court officers be appointed by, and responsible to, the Federal authorities and unless the Superintendent of Bankruptcy be empowered to investigate and report on the conduct of these officers as well as on the work of trustees. We believe that the fees now charged in connection with bankruptcies are sufficient, if collected by the Dominion Government, to pay the salaries of competent officers and in addition to cover the salary and expenses of the Superintendent of Bankruptcy and his staff. We have been informed that the revenue from fees in connection with bankruptcies in the District of Montreal alone represents a surplus of approximately $40,000, over the salaries paid.

While we recognize a need for effective supervision of trustees, there is an equal or greater need for supervision of officers of the Bankruptcy Courts. Bankruptcy administration will be satisfactory or otherwise according to the manner in which Official Receivers, Registrars and other officers of the Bankruptcy Courts discharge their duties. Much of the present unsatisfactory conditions in connection with the administration of bankrupt estates in some of the Provinces is traceable, directly or indirectly, to incompetence, indifference or worse on the part of some of these Court officers. If officers of the Bankruptcy Courts were following the requirements of the present Bankruptcy Act and refused to tolerate practices and charges which are not in accordance with the Act, there would be little cause for dissatisfaction on the part of creditor interests and there would be no need for a Superintendent of Bankruptcy. The weakness of the present administration is due primarily and mainly to the lack of effective supervision of Bankruptcy Court officers rather than to misconduct or fraudulent practices on the part of trustees. As regards bankruptcies in the shoe trade, the Shoe Manufacturers' Association of Canada is already policing the administration of estates in which its members are interested and our difficulties are not so much with trustees (because we can keep estates out of the hand of undesirable trustees), but arise chiefly because of failure on the part of some Bankruptcy Court officers to require compliance with the provisions of the Bankruptcy Act.

Efficient bankruptcy administration is dependent, and must continue to be dependent, very largely on the character and ability of the Official Receivers, Registrars and taxing officers. These should be men of the highest type. They ought not to be dependent upon fees, but should be paid adequate salaries and should be forbidden to make any charges for services outside their regular duties. It is a well-known fact that the Registrar in one of the major bankruptcy jurisdictions in Canada attends to a very large part of the advertising required under the Bankruptcy Act, receiving a substantial discount from the newspapers and also making a charge for translation, " attendance ", etc. It is an unhealthy condition

when a Court official has any financial interest in retaining the goodwill of trustees whose administration he is required to supervise. In another bankruptcy jurisdiction, the Official Receiver made an offer to buy from the trustee of an insolvent estate for $75 book accounts amounting to $949.49. When he objected to acceptance of this offer and pointed out that the bidder was the Official Receiver, we were informed that he was also a practicing lawyer, who handled a good deal of collection work. His intentions may have been entirely honourable, but it was unfair that the trustee should be placed in the position of having to recommend to the inspectors either acceptance or rejection of an offer by the Bankruptcy Court official from whom the trustee received his appointment as Custodian. In another case, an Official Receiver acted as solicitor for the trustee, even doing practically all the correspondence, acknowledging receipt of claims, etc., and, of course, making a substantial charge for his services, notwithstanding that payment for much of the work properly should have been covered by the trustee's fee.

In fairness and lest our remarks should be wrongly understood as applying to Bankruptcy Court officers generally, we want to state that some of the officers are men of the highest integrity who have been doing their utmost to ensure efficient and economical administration of bankrupt estates and to protect creditor interests against improper practices or unfair charges. In this connection special mention may be made of Mr. Wm. J. Reilley, Registrar for Ontario at Osgoode Hall, Toronto, and there are others for whose efforts we have only the highest commendation. In bankruptcy jurisdiction where men of this type are in charge, conditions for the most part are satisfactory, undesirable trustees if not entirely eliminated have been very considerably restricted, and Court costs and solicitors' charges are lower than in other jurisdictions.

The Bill as drafted by the Special Committee of the Canadian Bar Association provided that the Superintendent should " investigate into the performance of the duties of Official Receivers and make such recommendations to the Minister or to the Chief Justice as he deems advisable or expedient," but this provision has not been included in the Bill now before Parliament. We can understand the reluctance on the part of Parliament to undertake supervision of Court officers, but we consider it of vital importance that this be done. It may be pointed out that trustees, themselves, are Court officers, so that only an extension of a principle already approved would be involved in extending this supervision to include Official Receivers, Registrars and taxing officers. Unless these officers be made responsible to the Dominion Government, the Superintendent of Bankruptcy would have no status before them. It would be quite impossible to bring about a uniformity of practices and charges in the several bankruptcy jurisdictions throughout Canada. Moreover, the Superintendent of Bankruptcies would hardly be in a position to criticize trustees who can show that their administration has been approved by the Registrar and that the latter has signed their statement of receipts and disbursements. The hands of the Superintendent will be tied unless Bankruptcy Court officers be appointed by, and accountable to, the Minister of Justice. If these Bankruptcy Court officers be made directly responsible to a Department of the Dominion Government and if the Superintendent of Bankruptcy be given adequate power to investigate all conditions affecting bankruptcy administration, we believe that a uniformity of practice and charges can soon be established in the several bankruptcy jurisdictions and that the objectionable conditions resulting from the present lack of effective control would be corrected in large measure.

If bankruptcy administration be brought under jurisdiction of the Dominion Government by appointment of Official Receivers, Registrars and taxing officers, the cost, including the salaries and expenses of the Superintendent of Bankruptcy and his staff, could be met out of fees instead of a special percentage levy being made against the proceeds of bankrupt estates as is proposed in this new Bill. Supervision of bankruptcy administration is in reality a branch of police work and, if there be surplus revenue from the fees collected, we believe that this money may properly be applied to defray the expenses of supervision of bankruptcy liquidation instead of establishing a new toll on the assets of bankrupt estates and reducing the amount available for distribution to the creditors.

Our first and principal objection to the Bill now before Parliament is that it does not go far enough in bringing bankruptcy administration under control of the Dominion Government and that, in the absence of any effective check on officers of the Bankruptcy Courts, the Superintendent of Bankruptcy would be powerless to deal with some of the most serious conditions about which creditor interests have been complaining.

Turning to a more detailed consideration of the Bill, we respectfully ask the Committee's consideration of our objections to several of the proposed sections or subsections and our suggestions for changes in the wording of several others.

Section 17 of the Bill—(Sec. 34, ss. 2 of the Act) Experience has proved that it is usually detrimental to the interests of the creditors to carry on a business after bankruptcy. Not infrequently the debtor may influence the trustee to apply for an order to have the business continued.

As a safeguard against undue influence in this connection we suggest that subsec. 2 of sec. 34 of the Act should be amended to provide that the Court may make an Order authorizing continuance of the business only after reference to the wishes of the most interested creditors. In cases where the principal creditors consider it advisable to have the business continued under direction of the trustee, the latter can obtain their approval in writing, either by letter or telegram, and submit this evidence to the Court at the time the application is made.

(That would involve adding the words, " after reference to the wishes of the most interested creditors.")

Hon. Mr. LAPOINTE: Do you mean the majority?—A. No, I would say the three largest.

By Mr. Anderson:

Q. Is not that carried out now?—A. No, in a great many cases the solicitor of the debtor will apply to the Court for continuance, and the business is continued on an unsound basis.

Q. What about the inspectors?—A. This is before the inspectors are appointed. Notices have to be sent out. In the meantime the debtor would be continued in the business.

Q. He would not be if I were a creditor, and I have never seen it done yet.—A. The creditors cannot do anything until the inspectors are appointed. It is entirely in the hands of the custodian, and if on the application of the debtor or any interested party the Court orders the custodian to continue the business, then the creditors have no say until after the first meeting.

By Mr. Turnbull:

Q. It is not the debtor but the custodian who carries on.—A. But in many cases he is selected by the debtor.

By Mr. Anderson:

Q. He should not be permitted to carry on without the sanction of the creditors. I have never known it done.—A. We have had it many times in the shoe trade.

Q. As a rule the meeting is called, and at that meeting the inspectors are appointed.—A. But there is a ten day period, and in that period considerable may happen, and has happened in many cases.

By Mr. Speakman:

Q. Do you contend that during that interim the debtor, through the custodian, may absorb part of the estate fraudulently?—A. In a great many cases the difficulty is that there is a lack of effective control. The custodian may not have a definite interest in seeing that things are run properly, it is difficult for him to maintain control, the employees and clerks are employees of the debtor, the debtor himself is in charge. Besides that, it interferes with the taking of stock, because if goods are being sold while inventory is being taken, if the business is closed later it means that the inventory has to be done all over again. It is a generally unsatisfactory situation, and we feel that unless the three largest creditors are favourable to the business being continued after the assignment, it should be closed at least until the inspectors decide what is to be done.

By the Chairman:

Q. As a matter of practice does not the custodian immediately take charge and close the business up while he is taking stock?—A. In a great many cases that is done, but in others the debtor or the debtor's solicitor will apply for an order, and the custodian then has no option but to have the business continued. It some cases the creditors are not even notified that that application was made, they have no opportunity to oppose an application for an order to have the business continued under direction of the custodian.

By Mr. Anderson:

Q. That will be owing to laxity of the court officer?—A. No, in ascertaining the wishes of the creditors.

Q. And that comes within your first criticism.—A. Yes. Our suggestion is that the order for continuance of the business be made only after reference to the wishes of the most interested creditors.

By Mr. Fraser:

Q. Do you contend that the custodian has not effective control after he takes charge?—A. He has in a great many cases not effective control in actual practice.

Q. Are you trying to correct that by legislation?—A. We are suggesting that until the inspectors decide what is to be done, or unless the principal creditors are in favour of continuing, the business should be closed until the first meeting is held.

Q. Does the custodian carry on business after bankruptcy under the control of the owner of the business?—A. No, as custodian of course he is an officer of the court, but in actual practice the debtor is left and the debtor's staff is in charge.

Q. You are saying the custodian is not capable of running a business during that interval, and you want it closed?—A. Yes.

By the Chairman:

Q. For instance a fruit store, you could not close that up, it would have to be carried on?—A. In that case, where goods are perishable, either they should

be sold at once or the business carried on and the assets sold. But in most cases the goods are not likely to be depreciated in ten days or so. But there is the possibility of goods being removed, or of the men the custodian puts in charge being in collusion with the debtor or with the debtor's staff, and the interests of the creditors may be seriously prejudiced.

By Mr. Anderson:

Q. You can never watch all that, if people are dishonest.—A. But if the business is closed you have a greater measure of control.

Mr. ANDERSON: Then you have to have the key in your pocket.

By Mr. Speakman:

Q. The suggestion is that immediately the first steps in an assignment are made the business be closed, except by agreement with the creditors?—A. Yes, the custodian or the solicitor who applies for the order should have the approval of the three most interested creditors to put before the Court, and the Court would consider the application only after reference to their wishes.

By Mr. Turnbull:

Q. Do you mean the unanimous approval of those three?—A. Well it is up to the Court after finding out the wishes of the creditors.

By Mr. Spence:

Q. Why say the three largest interested creditors? Even they might not have more interest in the affair than the balance would. Why not name a percentage, representing a certain percentage?—A. It is always more difficult to get a percentage of the creditors.

Mr. SPENCE: I am referring to a percentage of money.

By Mr. Turnbull:

Q. You do not know who they are until after the meeting?—A. Well the debtor usually gives a statement showing the list of creditors. This is worded in such a way that I do not think there would be any difficulty: "only after reference to the wishes of the most interested creditors." Under the present Bill the custodian is supposed to be appointed after reference to the wishes of the most interested creditors, and I have followed the same wording.

Mr. FRASER: The most interested creditor may not have the largest financial interest.

Mr. SPENCE: 75 per cent of the money involved should be represented.

By Mr. Anderson:

Q. Is not that a matter of detail? What you want is that continuation shall only be on the consent of the creditors in some form?—A. Yes, on application of the creditors.

By the Chairman:

Q. But you might not be able to get a Court order. For instance in many towns where there is no Court sitting you might not be able to get near a judge to get an order.—A. Well, the business cannot be continued without the order of the Court.

Q. As a matter of practice you say they do continue?—A. Only after an order of the Court.

By Hon. Mr. Lapointe:

Q. It would compel the Court to ascertain the wishes of the creditors?—A. That is what we suggest, sir.

Section 19 of the Bill (proposed new Section 36A of the Act, subsection 4)—

The Bill provides that in issuing licences the Minister may, "in and by the licence restrict the powers and duties of any licensee to any bankruptcy district or any part thereof." The Bill which was drafted by the Canadian Bar Association proposed repeal of Section 37, subsection 1, and substitution of a provision that the creditors shall, at the first meeting, appoint by ordinary resolution any duly licensed person residing or having an office or place of business in the province where the debtor resides or has his chief place of business, as trustee for the administration of the estate. We made representations to the Minister of Justice in this connection, pointing out that under this provision we would be debarred from acting as joint-trustee of shoe estates elsewhere than in the province of Quebec. (I may say that while our members are distributed all over Canada, for the sake of economy, and as our revenues are very limited, we have only one office, in the city of Montreal.)

By Mr. Turnbull:

Q. As creditors you would not want to be joint-trustees as well, would you? —A. Our usual practice is to have the proxies sent to us, and I am appointed as joint-trustee of these estates.

Q. I would not want you acting in Saskatchewan, if you lived in Montreal. —A. It must be kept in mind, gentlemen—I do not want to argue this matter, of course, I have no right –but our interests are the interests of the debtor himself. If the business can be saved, we want to save it.

Q. The debtors in Saskatchewan who have sent representations to me and to this Committee say that the interests of the creditors are not their interest, and they object to these estates being given to trustees and companies who are composed of creditors that wind up the estates. They do not agree with you.— A. We have no financial interest in forcing bankruptcy in any case. If we could work out the business to save the equity for the debtor it is in the interests of the creditor to do so.

This restriction has been removed, but the wording of subsection 4 of the proposed new section 36A suggests a possibility that the operation of licensees may be restricted to any bankruptcy district, or even to a part of a bankruptcy district. The Bankruptcy Act is a Federal Act, the trustees would be acting under Dominion Government licence and under Federal Government supervision, and creditor interests are located in all parts of the Dominion. Under these conditions we believe that any effort to handle bankruptcies in provincial or local compartments ought to be opposed. If the majority of creditors of an Ontario estate want to elect a qualified licensed trustee who happens to be a resident of the province of Quebec, or if creditors of a Quebec estate favour a trustee resident in the province of Ontario, there does not appear to be any good reason why their wishes should be blocked by provincial prejudice. Competition amongst trustees to win and retain the confidence and support of creditor interests by honest, efficient and prompt service is a protection for the creditors, and ought not to be replaced by anything approaching a monopoly of the trustee business. Trustees will be able to retain estates only if they have the support of the creditors, and, unless the circumstances be very unusual, creditors will not approve trustee appointments which will entail heavy expenses for travelling, etc. The interest of creditors might be seriously prejudiced if, for example, a trustee in Ottawa were debarred from handling an estate of a debtor in Hull, or if a trustee from Hull were unable to act as trustee of an estate in Ottawa, even though favoured by a majority of the creditors. Local trustees may not have the confidence of the creditors, or may be unduly favourable to

the debtor, and we believe that the interests of all concerned will be properly safeguarded by the requirement that the custodian shall be appointed by reference to the wishes of the most interested creditors, and that the creditors, if dissatisfied with the trustee so selected, may elect any licensed trustee of their own choice.

By Mr. Fraser:

Q. Contrast Halifax and Vancouver, how would it affect that situation?—A. No creditor would give proxies to support a trustee in the Maritime Provinces in connection with an estate in Vancouver.

By Mr. Turnbull:

Q. Would not creditors residing in Montreal or Toronto be prepared to give proxies to a trustee in Montreal or Toronto for an estate in Saskatoon?—A. What we do in the shoe trade is, we do not attempt to handle details of bankruptcy administration. When I am appointed joint trustee it is with the intention of working with the trustee, seeing that charges are kept on a proper basis, and communicating to him the views of the creditors, working with him in an associate capacity with a view to protecting all concerned.

Q. There is no provision in this Ac tfor joint trustees. One licensed trustee is what the Act says.—A. Under the present Act joint trustees are frequently appointed. We have had no difficulty. It is a combination, as a partnership might be considered a trustee.

By Mr. Fraser:

Q. Would it eliminate the appointment by eastern creditors of trustees in Vancouver?—A. No.

By Mr. Turnbull:

Q. Absolutely it would.—A. No Montreal creditors are going to have an estate handled by a man at a long distance from the scene of the bankruptcy.

Mr. TURNBULL: From our experience I suggest that we do not trust you. By bitter experience we have learned not to do so.

Mr. SPEAKMAN: I have my doubts about making it possible for too much control to be centered in those two cities.

Hon. Mr. LAPOINTE: That is prejudice!

Mr. SPEAKMAN: No, it is bitter experience.

The WITNESS: It must be kept in mind, gentlemen, that we have members in the Maritime Provinces, in Quebec, Ontario, and British Columbia. In British Columbia there is one large shoe firm. In connection with estates there, we always consult the wishes of that creditor if that firm is interested.

By the Chairman:

Q. Are you associated with the Canadain Credit Men's Association?—A. No, we work fairly closely with them in connection with bankruptcy work, but we are not tied up with any trustee.

By Hon. Mr. Lapointe:

Q. You are autonomous?—A. Yes.

By Mr. Anderson:

Q. You are incorporated?—A. No, I have to act in my own name, but I am under bonds to the Association. I am also bonded in favour of the creditors. If the Shoe Manufacturers' Association of Canada is to continue its present bankruptcy work, in the interests of the entire trade as well as in the interests

of the creditors directly, we must be permitted to participate as joint-trustee in the administration of estates anywhere in Canada. This participation does not entail any additional expense against the estate, as we receive only a very small percentage of the trustee's regular fee to help to cover our expenses. I may say that in cases where it is at all possible we avoid bankruptcy, and handle these accounts under a trust account arrangement with a view to helping out the situation.

By Mr. Turnbull:

Q. You just represent the shoe manufacturers?—A. Yes. In the case of a general store account we never ask for appointment as joint-trustee.

Q. Your proposition is that you should be permitted to be joint-trustee on any estate anywhere?—A. Where our members have an interest. That is in strictly shoe estates. That is the arrangement under which we are acting at present.

By Mr. Fraser:

Q. What do you mean by shoe estates?—A. Shoe stores, business where our members are the suppliers.

Q. Retail and wholesale?—A. Yes. We could not in the case of general stores handle the thing the same way at all. But by this means, where our members have the controlling interest, we can in many cases keep the business out of bankruptcy entirely.

By Mr. Turnbull:

Q. Do other manufacturers adopt the same practice, say the clothing trade? —A. No, I do not think so, not to the same extent at any rate. This is a plan that we have worked out during the past few years, and it has been approved by the retailers themselves. I have at present probably 15 shoe accounts under my supervision, I am handling their finances under trust account arrangements, I am working with them helping keep down their expenses, and we have saved a number of businesses from bankruptcy by that kind of arrangement. But when a business is forced into bankruptcy we feel that it is in the interest of all concerned that we should be associated with the trustee who is handling the detailed administration, so that we can work with him and help him handle the business in the way that will be most advantageous to all concerned, and save unnecessary expense.

By Hon. Mr. Ralston:

Q. But you are anticipating that possibly the Minister may restrict the ambit of your activities?—A. I am pointing out that under the working of that—

Q. You do not expect that he will change the Act simply for your case? There is no reason the Minister should not have power of restricting the district if he desires.—A. No, we have no objection to that, except that in the original bill as proposed there was a definite restriction. It has been cut out from the Bill now before Parliament.

Q. You are satisfied with this Bill as it stands?—A. Yes, as long as this other provision is not restored.

Section 29 of the Bill (Section 85 of the Act) proposed new subsection (6)—

This proposed new provision is intended to discourage solicitation of proxies, but in practice it would operate to the detriment of creditor interests. The Bankruptcy Act recognizes the principle of control by the creditors in regard to the appointment of trustees and inspectors. Debtors not infrequently place their affairs in the hands of trustees from whom they expect special consideration. The Bankruptcy Act provides means

whereby, in the event of the creditors being unwilling to have the estate administered by the trustee so selected, they may elect a trustee of their own choice, but creditors would be powerless to protect their interests in this way unless they be permitted to work together through trade associations or with trustees in whom they have confidence.

I may say in explanation of this that we are not antagonistic in any way to the legitimate merchant, but there are some pirates in the trade, and they cause the trouble. They will go to a trustee, place their affairs in his hands, and the creditors are powerless unless they are able to control the appointment of the trustee by a collective effort.

Creditors frequently ask reputable trustees to endeavor to obtain control of estates which are in the hands of persons in whom such creditors have little or no confidence, and we object to any provision which would make it more difficult for creditors to protect their interests in this connection.

By Mr. Speakman:

Q. By the way, are you suggesting that pirates are only to be found in the retail trade?—A. Absolutely no, sir. In a great many cases there has been fault on the part of the wholesale and manufacturing interests in the way that credit has been granted without seeing that the business was operated on a sound basis. But when they get in a situation of that kind, they have to work it out in the interest of all concerned.

In accordance with a policy which has been approved by its members, the Shoe Manufacturers' Association of Canada solicits its members to sent their claims and proxies to the Association so that these can be voted by the Manager of the Association in the interests of the creditors generally. If creditors be unable to protect their interests in this way there is danger that debtors, and creditors friendly to the debtors, may be able to control appointments. Trustees who may be acting at the request of the principle trade creditors, or even trade associations such as the Shoe Manufacturers' Association of Canada, might be handicapped in the work for the protection of the creditors by such a provision as is here proposed.

By the Chairman:

Q. The only provision here proposed is that you may be deprived of your remuneration. It does not follow that you must be, because the Court may or may not order that you be.—A. I quite recognize that, but there is always the possibility that a local Registrar who may be friendly to a local trustee with whom the creditors have had unsatisfatory experience, and this provision might be used to block any effort of that trustee to handle assets in that estate.

By Mr. Turnbull:

Q. That is a point at which I think you ought to be blocked. But your solicitation of the members of your Association to send proxies to you that you can use in your discretion is not solicitation on behalf of any particular trustee? —A. Well if I am appointed trustee—

Q. That is one of the troubles, I think, of you being appointed trustee. I think if I were the Minister I would consider it carefully. Suppose the Canadian Manufacturers' Association had a similar arrangement, and they asked for proxies from their members, that would not be solicitation on behalf of a trustee at all. The thing that is aimed at is a trustee going out himself or getting some creditor to solicit proxies so that he will get the estate rather than some other trustee. A boot and shoe manufacturer will go out and solicit proxies to make sure you are appointed. Is not that what happens?—A. I think this will answer

your question; in your constituency there may be a trustee with whom the creditors have had unsatisfactory experience. The Credit Men's Association may have an office in your district. We may wire the Credit Men's Association stating that we would like them to try to get control of that estate, and that we will ask our members to send their proxies to us and they will be forwarded to them. That will be an effort to get control of the estate in the hands of a responsible and reputable trustee, and keep it out of the hands of other parties whom we feel have not been protecting the interest of the creditors, and who are working for the debtor.

In general there are two classes of trustees, those who obtain business primarily from debtors interests and those who obtain business primarily from creditor's interests. We feel that those representing the interests of the creditors, and trying to protect their interests, should be able if the creditors wish to get the assets out of the hands of these back-alley trustees who have no interest to serve except their own.

By Mr. Turnbull:

Q. You feel that between debtors and creditors it is the interest of the creditors that should be paramount?—A. Yes. Of course bankruptcy only occurs when the situation is hopeless, after other means of saving the situation are exhausted.

Q. Take my own Province, we have the Retail Merchants' Trust Association. Is there any reason why they should not be allowed to be licensed trustees?—A. No, none whatever.

Q. Under the circumstances when these proxies are solicited and collective action taken by the creditors, do you think there is any chance in the world of their becoming trustees?—A. I do not see any particular reason why not. Certainly the Retail Merchants' Association is a reputable organization. We would have no objection provided the Retail Merchants' Association show that they are getting results, handling the thing fairly. We would be willing to work with them, we are not tied down to any trustee.

Q. They cannot get into the picture. In a contest between the Canadian Credit Men's Association and the Retail Trust Association, would there ever be any chance for the latter?—A. In certain circumstances it might be very possible.

Q. Do you think it is advisable that interested parties should not be trustees at all, any more than official receivers?—A. The Credit Men's Association is an organization primarily of creditor interest.

Q. Yes, who are all interested in the estates.—A. Yes, some of their members are creditors. It is essentially an organization of creditor interest.

Q. Do you not think, the trustee being an official of the Court, it would be much better if the trustee had none of that indirect interest, just the same as you say the official Receiver should have no interest in the estate?—A. Our experience has been so unsatisfactory with official receivers that I distrust any arrangement of that kind.

Q. I have heard some retail merchants in western Canada say that the Canadian Credit Men's Trust Association was not satisfactory from their point of view, but for all that quite satisfactory from the creditor's point of view.—A. Not always.

By the Chairman:

Q. Is not this idea of appointing licensed trustees adopted for the very purpose of removing the evils you speak of? If you have licensed trustees are you not removing the undesirable class?—A. Presumably, that is the purpose of the legislation, but as I see it there are going to be serious difficulties in refusing licence to trustees unless there is some very definite proof. Debtor or creditor

interests may know that that man's administration has not been satisfactory, but unless there is some definite proof of wrong doing it would be difficult, as I see it, to deny a licence to a man of that kind.

Hon. Mr. RALSTON: Is this section with regard to solicitation drawn by the Canadian Bar Association?

MEMBERS: Yes.

The WITNESS:

Section 46 of the Bill (section 194 of the Act, proposed new subsection (2)—

This provision is good as far as it goes, but we believe that it may properly be widened to provide that, "If any inspector or any company or partnership or association by whom any inspector be employed or with whom any inspector be connected or associated in any capacity whatsoever shall accept special payment or emolument or any valuable consideration, directly or indirectly, then the person and / or company or firm receiving or benefitting from such special payment or emolument or consideration shall be guilty of an indictable offence," and liable to punishment.

This is simply to extend the provision of the clause to include companies whose inspectors receive preferential payment.

We also ask that further safeguards be afforded against secret preferential treatment of creditors, by a provision to the effect that, "No contract or agreement under which any creditor or any inspector is to receive directly or indirectly any valuable consideration from the debtor or from any other person for financing or assisting in financing or guaranteeing payment in connection with any offer of composition or scheme or arrangement or any purchase of the assets of an insolvent debtor shall be enforceable in law unless a copy of such contract or agreement shall have been deposited with the trustee and approved in writing by a majority of the inspectors at the time the offer of composition or purchase be made."

That would provide against preferential treatment to inspectors that may be detrimental to the interest of the creditors generally.

We respectfully ask that before reporting the present bill the Committee give special consideration to the matter of landlord's privileges under bankruptcy in the Province of Quebec. The preferential rights of landlords under Quebec law are seriously unfair to the unsecured creditors. In many cases the landlord's preferred claim for rent absorbs all or a very large part of the proceeds of a bankrupt estate. This situation is encouraging compromise settlements at very low rates on the dollar, especially under present conditions of business depression, as the creditors know that in the event of bankruptcy there will be very little, if anything left, after payment of the landlord's preferred claim and the trustee's costs.

Landlords in the other provinces appear to be satisfied with the lesser privileges under their provincial laws. Some years ago the Dominion Bankruptcy Act limited the landlodr's preference for rent, and we ask very earnestly that the Committee recommend such limitation of the landlord's privileges as will establish uniformity in the several provinces and afford a larger measure of protection for the ordinary creditors.

An increasing number of insolvent debtors have taken advantage recently of the Bulk Sales Acts of some of the provinces to dispose of their stock in trade to relatives or others without consulting their creditors. In order to afford a reasonable measure of protection to creditor interests

in this connection, we respectfully ask that a provision to the following effect be included in the bill, as a new section 64A:—

> Every conveyance of goods, chattels, or other property by a sale in bulk shall, if the vendor be adjudged bankrupt on a bankruptcy petition presented within three months after the date of the said sale, or if he or she makes a voluntary assignment within three months after the date of the said sale, be deemed fraudulent and void against the trustee in bankruptcy or under the authorized assignment, unless before completing the said sale the vendor shall have obtained the consent in writing to the sale of a majority of all creditors and holding three-fourths in amount of all provable debts then existing, whether due or not yet due.

By Mr. Anderson:

Q. The Province of Ontario has a Bulk Sales Act?—A. Yes, but the consent of the creditors is not required. That is explained in the next paragraph.

Q. A trustee is bound to communicate with the creditors?—A. Yes, but the proceeds are deposited in the hands of the trustee, the consent of the creditors does not have to be obtained.

Q. The creditors have to prove their claims and he must distribute accordingly.—A. Yes, but the consent of the creditors is not required for the sale. The assets can be taken beyond the control of the creditors entirely.

> In explanation of this request, we recognize that the Bulk Sales Acts of some of the Provinces already require that the consent of the creditors be obtained, but in other Provinces the consent of the creditors is not required, provided that the proceeds of the sale be paid into the hands of a trustee for distribution. We have found that certain trustees have been taking advantage of this situation, in cases where there is considerable uncertainty as to whether the creditors would consent to a compromise settlement, by putting through a sale of the debtor's assets in bulk to a relative or other person at a price and on terms of payment which are decided often without the creditors being consulted in any way. By this procedure, the assets are removed beyond the reach of the creditors and in practice the debtor is protected against bankruptcy proceedings, as any creditor which presents a petition for a receiving order is confronted by the fact that there are no available assets to cover the costs and trustees will refuse to accept appointment unless their expenses be guaranteed. The result is that an insolvent debtor is able to retain possession and control of the assets, books, etc., in the name of a relative or friend, on terms which he himself may decide.
>
> Any creditor has the theoretical right to petition the Court to set aside the sale in bulk, but, in most cases, the creditors have no exact information in regard to the assets and liabilities and are not in a position to prove that a larger return to the creditors could have been obtained at a competitive sale. Creditors who may object to the sale in bulk or desire to have additional information in regard to it have no recourse, unless they be prepared to apply to the Court at their own expense and risk, and the Courts usually refuse to intervene unless conclusive proof be presented that the sale in bulk is definitely prejudicial to the interests of the creditors. In actual practice, it is very difficult for creditors to supply such definite proof, as often no exact inventory of the goods transferred by the sale in bulk has been prepared. Moreover, by the time proceedings are instituted, a large part of the goods may have been disposed of and it is impossible to obtain a definite and satisfactory accounting.

If the provision which we have suggested be incorporated in the Act, we believe that it would be of very considerable protection to creditor interests and would not entail any hardship on vendors or purchasers in cases where a sale is on a proper basis. It would have the effect, however, in cases where a debtor is insolvent, of ensuring that the creditors would be advised of the proposed sale and that the sale would have to be approved by the same majority of the creditors as is now required under the Bankruptcy Act to approve a composition.

By Mr. Anderson:

Q. Do you think you would secure them by that length of time? I think you said three months. The estate might be dissipated in the meantime.—A. But then the creditors would have recourse against the person—

Q. But it is beyond all possibility of saving it.—A. The result of this provision would be that a person, before taking over the assets, would see that the consent of the trustee was obtained. They would not take over the assets without having the creditors advised and sending out forms of consent to the sale.

Q. Well that would be a provincial matter.—A. Possibly. Provincial laws are different at present, but bankruptcy is a matter under Federal jurisdiction. I think a provision of this kind would only apply in case bankruptcy occurs within three months. It would simply be to bring in conformity with the legislation you have in Saskatchewan the legislation of the other provinces by an indirect way.

Q. I see what you are coming at, but, it seems to me your remedy is not applied quickly enough. The assets might be dissipated in that time and you could not reach them.—A. But we then have a hold on the purchaser.

By Mr. Fraser:

Suppose he is irresponsible.—A. You still have a hold on him, there is a claim there at any rate. It seems to me that if this provision is incorporated in the Act purchasers are going to be very careful to see that he consent is obtained.

Mr. Anderson: I think what you should suggest is that there should be an amendment to the provincial law.

By Mr. Turnbull:

Q. It will make purchasing at bulk sale rather a dangerous procedure.—A. Yes, unless the consent is obtained.

Q. There is no procedure for obtaining the consent.—A. Yes, a trustee has the proceeds turned in to his hands, and he would have a form of consent, the sale need not be completed until he gets the consents in.

By Mr. Fraser:

Q. Suppose your debtor is irresponsible, what is to prevent him getting an irresponsible person in league with him——.—A. That is being done now. This is simply a further safeguard.

Mr. Anderson: If it will operate quick enough.

By the Chairman:

Q. Under the Bulk Sales Act is not 30 days the limit within which the trustee holds the note or money?—A. A bulk sale may be made on terms, as long as the proceeds are turned in to the trustee to be distributed pro rata. These proceeds may not be received for 6 or 8 months.

Q. I thought you had to hold the securities for 30 days. I think that is the case in our province.—A. I am not sure in regard to that. We have had a great many of these cases in Ontario recently, and creditors are decidedly of the opinion that their interests have been prejudiced, and that in a great many cases these sales by a certain type of debtor have not been bona fide, and they have no means of checking it.

Under the present law, creditors rarely oppose a debtor's application for discharge, because of the expense involved in a contestation. While it is only proper that the costs in connection with a contestation of an application for discharge should be at the discretion of the Court, nevertheless creditors are entitled to protection, and we believe that provision may reasonably be made, by a new subsection of section 141 of the Act, that "the bankrupt, when applying for a discharge, may be required to provide security for costs in the event of a contestation."

Mr. ANDERSON: Keep him a bankrupt, never give him a discharge?

By Mr. Turnbull:

Q. Where would he ever get security for costs, if he is a bankrupt?—A. Well the amount is not very great, he can get money from relatives or friends to help him out.

By Mr. Kennedy:

Q. That is not fair.—A. If he is in a position to start back in business and wants a discharge, it seems only reasonable that he should pay whatever expenses are involved. In some cases where there is evidence of fraud—

Q. Is not there an inconsistency there? If a bankrupt makes an assignment of all his goods, and they are distributed among the creditors, yet you are assuming he must have some more money somewhere?—A. No I am not assuming that.

Q. Or credit?—A. But there may be, there are a great many cases where there is distinct evidence that a bankruptcy has been fradulent, where individual creditors or a group may feel that they have reasonable ground to oppose that debtor's discharge. We had a case recently in Ontario where a debtor skipped the country, went to Germany and came back and applied for discharge. His actions after the assignment hampered the trustee in liquidating the assets, the whole situation could not be cleaned up for a long time. We felt that under those circumstances it was only reasonable and proper, for the protection of the legitimate trader, to oppose that man's application for discharge.

Q. Yes, but you have that right now?—A. Yes, but any creditor must do it at his own expense. If a bankrupt has no means, if the solicitors refuse to pay the costs you have no recourse. The contesting creditor may be struck for both his own costs and the costs of the other side. We feel that if a man wants to start back in business and wants a discharge—

By Mr. Turnbull:

Q. Maybe he does not want to go back into business but wants his discharge, may never go back in business.—A. Well that is always possible, but creditors are not going to oppose an application for discharge unless there is some reasonable evidence of fraud. This is not going to affect the honest merchant.

Q. I know that theoretically these creditors are high-minded, altruistic people, but in practice the debtor sometimes does not find them so.—A. My experience has been that if there is any criticism creditors are altogether too lenient and do not protect their interests sufficiently.

The Bill which was drafted by the Canadian Bar Association contained a provision for an increase in trustees' fees. We note that this has been omitted in the Bill now before Parliament, but as Mr. Grundy has suggested an amendment which would increase the remuneration of the trustee, we consider it our duty to inform you as to the attitude of our members in this connection.

We recognize that proper payment must be made for efficient service, and, in some small estates the present fee of 5 per cent may not represent adequate remuneration. Nevertheless a general increase in remuneration of trustees of small estates under present conditions is open to serious objection. Under the existing law, the Court, with the approval of the inspectors, can sanction a fee in excess of 5 per cent, and this would appear to be sufficient to cover any special cases. The proposed increase in the fee of trustees of small estates would encourage many "small" trustees to apply for licences in order that they might handle occasional estates. If trustees be required occasionally to handle estates at a fee which little more than covers their overhead, there should be no complaint, as this is a service to creditor interests, and the trustees know that they will obtain a more satisfactory return from larger estates which come into their hands through the support of creditors.

In some sections of the Dominion the registrars quite properly limit the trustees' remuneration to the amount prescribed in the Bankruptcy Act, but in other districts the statutory fee almost always is supplemented by additional remuneration, either under the heading of "disbursements," or as special fees. We submit that under these conditions any question of increasing the remuneration of trustees ought to be considered only in conjunction with a closer regulation of all the payments to trustees, and a more exact definition of the services which are covered by the statutory fee and those for which special charges may be made.

Those are our recommendations, Mr. Chairman.

By Mr. Turnbull:

Q. Would you care to express an opinion with regard to the advisability of having only one licensed trustee in each district? And further, the advisability of having him an officer of the Superintendent of Bankruptcy, and the trustees' fees going to the Department?—A. Of course it would mean a radical departure from the present Act, which is based on the principle of creditor control. There is always a considerable distrust of Government in business. If the Government goes into the trustee business I think there would be considerable criticism. That brings up a very big question. It is a matter of policy, but we would not be in favour of a system of Government trustees.

Q. How about one trustee in each district?—A. There is no protection there for creditor interests, or even for debtor interests. You have a monopoly created, creditors have to take it or leave it, they are dependent on one trustee, no competition to protect the interests involved.

Mr. TURNBULL: You get away from that question of solicitation, and give a man a chance to build up an experienced staff.

The CHAIRMAN: Does the Committee wish this gentleman to be here for further questioning next Tuesday?—A. No.

The Committee adjourned to meet on Tuesday, the 19th of April, at 10.30 a.m.

APPENDIX No. 2

AMENDMENTS RECOMMENDED BY THE RETAIL MERCHANTS' ASSOCIATION OF CANADA, INC., AS SUBMITTED BY MR. W. L. McQUARRIE

1. That paragraph 6 of Section 9 be amended by striking out the word "creditors" in the first line and substituting the word "assignor" and that the remaining provisions of the Bankduptcy Act be changed so as to give effect to this amendment which will vest the authority of appointment of trustees in the assignor.

And further that paragraph (*kk*) of Section 2 be amended to read:

> Trustee or authorized Trustee means, any Trust Company or Institution licensed by the Government to act as Trustees in bankruptcy or under an authorized assignment or in connection with a proposal by a debtor for a composition, extension or scheme of arrangement to or with his creditors.

2. That paragraph (*g*) of Section 2 be amended by striking out the words "five hundred" and substituting "one thousand."

That paragraph (1) of Section 9 be amended by striking out the words "five hundred" in the second line and substituting the words "one thousand."

3. That paragraph (*g*) of Section 2 be amended by adding the words:
and shall not include any person or persons who have been given the benefit of a Debt Adjustment Act or any similar Act of any province.

Further that Section 4 be amended by adding an additional paragraph—(13):

> That this Section shall not apply to any person or persons who have been given the benefit of a Debt Adjustment Act or any similar Act of any province.

SESSION 1932

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 41, AN ACT TO AMEND

THE BANKRUPTCY ACT

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

WEDNESDAY, APRIL 20, 1932

WITNESSES:

R. Messier, Esq., Acting Dominion Secretary of the Retail Merchants' Association, Montreal; Aldéric Lalonde, Esq., President of "l'Union Catholique des Cultivateurs de la province de Québec," Rigaud, P.Q.; J. W. Cyr, Esq., President of the Sheriffs' Association, St. Jerome, P.Q; T. D'Arcy Leonard, Esq., representing the Dominion Mortgage & Investments Association, Toronto; Valmore A. De Billy, Barrister, Quebec.

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1932

MINUTES OF PROCEEDINGS

COMMITTEE ROOM 268,

TUESDAY, April 19, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act met this day at 10.30 a.m., the Chairman, Mr. Hackett, presiding.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Gobeil, Anderson (*Toronto-High Park*), Spence, Kennedy (*Winnipeg South Centre*), Turnbull, Fraser (*Cariboo*), Butcher, Lapointe, Speakman, Carmichael, 12.

Present: Mr. F. P. Varcoe, Justice Department, and Messrs. H. P. Grundy and Henry Detchon, representing the Canadian Credit Men's Trust Association, Winnipeg.

The Chairman read a communication received from the Honourable Adelard Godbout, Minister of Agriculture for Quebec, in which the Hon. Mr. Godbout expressed his desire to appear before the Committee.

The Chairman also brought to the attention of the Committee a telegram and a letter addressed to the Minister of Justice by the Honourable John Bracken, Premier of Manitoba, together with several proposed amendments to the Bankruptcy Act. These were filed to be given proper consideration in due time.

Telegrams were read from Mr. R. Messier, Secretary of the Retail Merchants' Association, Montreal, and Mr. T. D'Arcy Leonard, Toronto, stating they could not appear before the Committee this morning. Also a telegram from Mr. Paul Boucher, Secretary of "*L'Union Catholique des Cultivateurs de la province de Québec*" stating that their President, Mr. A. Lalonde would be in Ottawa to appear before the Committee this Wednesday afternoon.

No other witnesses being present to express their views before the Committee, it was unanimously agreed that the Committee adjourn to the call of the Chair.

R. ARSENAULT,
Clerk of the Committee.

COMMITTEE ROOM 429.

WEDNESDAY, April 29, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met at 3.30 p.m., the meeting being opened by the Chairman, Mr. Hackett, who was called away during the course of the proceedings and was replaced in the Chair by Mr. MacDonald.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Gobeil, Spence, Kennedy (*Winnipeg South Centre*), Turnbull, Fraser (*Cariboo*), Butcher, Lapointe, Speakman, Carmichael, 11.

In attendance: R. Messier, Secretary of the Retail Merchants' Association, Montreal; A. Lalonde, President, *L'Union Catholique des Cultivateurs de la province de Québec*, Rigaud, P.Q.; J. W. Cyr, President of the Sheriffs' Association, St. Jerome, P.Q.; T. D'Arcy Leonard, Toronto, representing the Dominion Mortgage & Investments Association; and V. A. De Billy, Barrister, Quebec.

Were also present: F. P. Varcoe, Justice Department, Ottawa; L. Roberge, C.A., Quebec; F. W. Wegenast, Toronto; H. P. Grundy, Henry Detchon and A. S. Crighton, Winnipeg.

Mr. Messier was called and read a memorandum on behalf of the Retail Merchants' Association. Witness retired.

Mr. Lalonde was called and submitted the views of his Association. Witness retired.

Mr. Cyr being called suggested some amendments to the Act. Witness retired.

Mr. Leonard was called and reviewed certain sections of the proposed Bill, suggesting some amendments thereto. Witness retired.

Mr. De Billy was called, and made some representations on behalf of certain wholesalers and Trustees from the province of Quebec. Witness retired.

No other witnesses being available for this sitting, the Committee adjourned to resume at 10.30 a.m., to-morrow, Thursday.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 429,

APRIL 20, 1932.

The Special Committee on Bill No. 41, an Act to amend the Bankruptcy Act, met this day at 3.30 o'clock, Mr. Hackett presiding.

ROSARIO MESSIER, called.

By the Chairman:

Q. Mr. Messier, what is your position?—A. I am Acting Dominion Secretary of the Retail Merchants' Association of Canada.

Q. Will you indicate the nature of your experience and the part of Canada in which you have had that experience?—A. I have prepared some notes, but before I proceed with those notes I should tell you that I have been Secretary of the Retail Merchants' Association of the province of Quebec and Acting Dominion Secretary for a little more than two years. I have had personal experience of quite a number of bankruptcies and I have had an enormous number of reports on different bankruptcies in different parts of Canada, and then our association last year appointed a special committee to study these questions and the report I have in my hand is a summary of its conclusions.

Q. Does your committee favour the appointment of a superintendent of bankruptcy under the Minister of Finance?—A. Finance or Justice, but we are certainly in favour of the appointment of a superintendent of bankruptcy. As a matter of fact, our association is among those who have suggested the appointment.

Q. Does it follow from that that you favour the licensing of trustees and restricting the business of winding up bankrupt estates to licensed trustees?—A. Yes. We have all this in this report which will likely be useful to the committee. It will not take long to read:—

> Our Association represents all the branches of the retail trade from coast to coast. It has been in operation for over 35 years and is by far the largest and the most important organization of its kind in Canada.

Q. Mr. McQuarrie who was here from Saskatoon represents your organization in Saskatchewan, does he not?—A. Yes, in Saskatchewan.

By Hon. Mr. Lapointe:

Q. The Retail Merchants' Association?—A. The Retail Merchants' Association of Canada. I happen to be at present the Acting Dominion Secretary of the association:—

> To help the retailers to improve their business methods, to protect them against unfair competition and to co-operate with the various governments in the preparation, application or amendment of the laws concerning the trade, are among our most important functions.
>
> Since I have been connected with the Association I have seen a considerable number of bankruptcies and heard all kinds of criticism about the Bankruptcy Act.

Our special committee, appointed to study the question, has summarized as follows the complaints of the retail trade regarding the Bankruptcy Act.

1. Fraudulent bankruptcies.
2. Excessive costs.
3. Unreasonable delays.
4. Assignment of farmers.
5. Assignment of salaried people.
6. Canvassing of assignments.
7. Canvassing of proxies.
8. Inadequate protection for the honest debtor.

With your permission, Mr. Chairman, I will deal with each of these eight items separately.

1. Fraudulent Bankruptcies

The practice of fraudulent bankruptcy has developed to such an extent that the situation has become alarming for the honest merchants.

When the business of the professional bankrupts has become so prosperous that the majority of the retailers are beginning to think that it is almost impossible to meet the competition of those people without departing from the principles of honesty, it is time to act, and we certainly appreciate your willingness to amend the Bankruptcy Act at the present session. We sincerely believe that, so long as the fraudulent bankrupt is not to be treated as the other criminals, no serious improvement can be expected.

Consequently our committee is strongly of the opinion that a public examination of the debtor should be made by the Court or the Superintendent or his officer in every case of assignment or bankruptcy, in order to determine the causes of the failure.

However, our Committee is not in favour of placing the burden of the proof upon every bankrupt to discupate himself for the reason that the honest bankrupt is generally left without any financial resources which would be necessary for his defence.

It is true that the amendment included in section 40 of the Bill is a step in the right direction, but we believe that the public examination should be obligatory in each case instead of being made only upon application of a creditor.

By Mr. MacDonald:

Q. Before you leave that point, have you any recommendations with regard to that—with regard to the punishing of fraudulent bankrupts outside of your public examinations?—A. The first thing is to exonerate the debtor. If it is found he has made a fraudulent bankruptcy, the necessary procedure should be taken against him, according to the conclusions of the examination.

By the Chairman:

Q. I think, Mr. Messier, the Retail Merchants worked with the Canadian Bar Association to some extent and are satisfied with the amendment to the draft bill which we have here, which is prepared by Mr. St. Laurent?—A. On many points.

Q. We are merely talking now about what punishments you suggest for those who are dishonest. That was Mr. MacDonald's question. I take it you are satisfied with the suggested amendment making it possible to send these dishonest debtors to jail or to fine them?—A. Exactly.

Q. If it is found that they have been guilty of dishonesty?—A. Yes.

Q. To what extent do you think the restriction of the administration of the Act to licensed trustees would cure the evil of which you complain? Because, after all, your charge is that the trustee is dishonest in administering the affairs of the bankrupt?—A. That may be so in some cases, but not necessarily. The fact that the farmers would assign and have the right to assign under the Bankruptcy Act will always permit him to avoid payment of his debt even if all the trustees are proven honest.

Q. But he loses his farm?—A. Yes, he loses his farm, but if he did not have the privilege of making an assignment and avoiding the payment of his debt he would probably keep his farm, and with sufficient time pay his debts just the same.

Mr. GIROUARD: Is it not a fact that if the bankruptcy law did not apply to the farmers that the credit of the farmers would be greatly improved?

The WITNESS: That is our contention.

By Mr. Gobeil:

Q. In other words, your principle reason for asking that the farmer be exempt from the Bankruptcy Act is not because, generally speaking, they are trying to avoid payment of the debt, but because it has ruined practically their credit?—A. Naturally.

Q. Or do you consider one reason as important as the other?—A. Naturally; but this fact that the value of their credit has been reduced is just a consequence of the cause.

By Mr. Butcher:

Q. Why should that be true of a farmer any more than a merchant whose assets are liable to attachment in case of bankruptcy? They are, are they not? —A. Yes.

Q. Where is the difference between the farmer and the merchant, for instance?—A. It may be the case with some merchants, and it is exactly on account of that reason—on account of the reason that some merchants sometimes may be inclined to use this way to avoid the payment of debts and be fraudulent that we are so much in favour of the majority of the restrictions that are included in the Bill.

Q. Are you implying that farmers would be more liable to avail themselves of fraudulent bankruptcies than merchants?—A. I will not be prepared to answer that question.

Mr. GOBEIL: May I suggest that that is not, in my estimation, the reason at all, because the source of credit—the sources from which farmers and commercial people are getting their money are not the same. The merchant get his money from the bank, while the farmer has to get it from individual loaners, and if he loses the money as a consequence of the loan he cannot get any more money, because it is lost. The banks do business based on the financial statement, on the face value of the person who applies for a loan.

The CHAIRMAN: The bank also has section 88, and they have the privilege of hypothecation.

The WITNESS: The farmer's creditor does not enjoy that.

The CHAIRMAN: As a rule.

Mr. CARMICHAEL: By individual loaners, does this gentleman mean mortgage companies and such like?

The WITNESS: I mean mortgagees; anybody who loans on a mortgage.

Mr. CARMICHAEL: In our part of the country the bulk of the money loaned to farmers is from the mortgage companies.

The CHAIRMAN: With the permission of the Committee I will ask Mr. Finlay MacDonald to replace me. I have to go into the House.

The WITNESS (Reading):

Excessive Costs: Take 100 creditors at random and ask them what they get from the bankrupt estates. The big majority of them will tell you that they generally get almost nothing because the costs eat up all the assets.

I am not prepared to say who is responsible for that situation, but our Committee is strongly in favour of the amendment of subsection 5 of section 85 of the Act according to the section 29 of the Bill which reads as follows:

The disbursements of a trustee shall in all cases be taxed by the prescribed authority.

Unreasonable Delays: There may be a close relation between this and the previous item. But we hope that the control or supervision exercised by the superintendent over the administration of the estates will prevent all the causes of complaint of that nature.

Assignment of Farmers: We always have believed the purpose of the Bankruptcy Act to be to facilitate the settlement of commercial debts. On the other hand, and in a general way, according to reports from our merchants, farmers who make assignment do so with the object of avoiding to pay their debts. This has resulted in a decrease of the confidence farmers have enjoyed in the past, and the credit of farmers as a class has suffered considerably thereby.

Therefore, we respectfully submit that the Bankruptcy Act be amended in such a way as to prevent farmers from making assignment under the Bankruptcy Act.

The ACTING CHAIRMAN: Does any person wish to discuss the question under this head, before Mr. Messier leaves that point? He is now going to deal with his next subject.

The WITNESS (Reading):

Assignment of Salaried People: The same remarks as in the previous item could be repeated here, as there have been a great many cases where private individuals have made assignment under the Bankruptcy Act. This seems to have happened more frequently in the province of New Brunswick. In this connection we would like to mention the case of Dr. A. E. Forbes of Moncton vs William W. Coull. Mr. Coull, as a brakeman for the C.N.R., earned $2,000 in 1928, $2,395 in 1930, and during the first eleven months of 1931 he received $1,800. When he assigned, his debts amounted to $694.20, with assets of $10 only.

Dr. Forbes requested the Court to enable him to sue William Coull for $125 which was the amount claimed for an operation performed on the latter's son. Hon. Chief Justice Barry of the Supreme Court in New Brunswick granted the request. In his judgment, Justice Barry condemned in the strongest possible terms the practice of certain people to make assignment under the Bankruptcy Act, their only purpose being to avoid meeting their obligations and paying their debts.

I do not know if all the members of this committee realize the importance of this point. It must be kept in mind that the salaried people generally get their credit from the merchant merely on account of their position, on account of the salary they are getting, not on account of the immovable assets or any other assets that they have. The only asset they have, as a rule, is their salary. So that whenever they assign, whenever they have succeeded in accumulating more than $500 worth of debts and they are inclined to be looking for some

way of avoiding payment of their debts, they assign under the Bankruptcy Act, with absolutely no assets, which in our view is absolutely unfair and is a practice which should be removed.

The ACTING CHAIRMAN: In that particular case which you mentioned, where Chief Justice Barry allowed him to issue the writ, did he get judgment against the defendant?

The WITNESS: Yes, but they finally succeeded in getting the court to do something in that case, because there had been an enormous number of cases of abuse of the process in Moncton. If my memory serves me right, I think they had as many as 400 cases in a year.

The CHAIRMAN: I believe they had 50 or 60 in one day there?

The WITNESS: Yes.

The ACTING CHAIRMAN: Before you leave that. I do not know how it is in other provinces, but in our province this man would be brought up under the Collection Act and a portion of his salary would be allocated to pay that. Is not that the same way?

The WITNESS: It does not seem to be so in the province of Quebec. We have the Lacombe Law, but if he places himself under the Act,—

Hon. Mr. LAPOINTE: Was this man whom you mentioned an employee of the railway?

The WITNESS: Yes.

Hon. Mr. LAPOINTE: Then he did not come under the Lacombe Law?

The WITNESS: No. (Reading):—

> *Canvassing of Assignments:* Canvassing of assignments is unduly practiced by certain trustees, who promptly offer their services to all debtors against whom a judgment has been rendered. These trustees endeavour to obtain consent to voluntary assignment from the debtor to whom promise of quite satisfactory settlement of all claims against him is made. This results in numerous fraudulent bankruptcies to the detriment of all concerned.

I know that in many cases they go so far as to offer to loan money to the debtor, in the first place, to induce him to consent to an assignment; but it finally, as a rule, turns to a regular bankruptcy. And it is certainly a practice that should be stopped.

> *Canvassing of Proxies:* It should not be necessary to insist very much on the idea that the more zealous canvassers of proxies are not necessarily the best administrators of Bankrupt Estates. We are strongly in favour of subsection 2 of section 29 of the Bill, which provides that the Court shall have power to order that no remuneration be allowed in certain cases.
>
> *Inadequate Protection for the Honest Debtor:* We claim that the full rigour of the law be brought to bear against all who have been guilty of fraudulent practices. But we also request that the honest debtor be allowed adequate protection in case he has to make assignment. In the line with the above we respectfully offer the following suggestions:—
>
> 1st. That trustees be granted a licence only when their competence and honesty have been satisfactorily established.
>
> 2nd. That no person or corporation having an interest in the estate as creditors be appointed to handle the estate.
>
> 3rd. That the debtor be allowed the privilege of making assignment with a trustee of his own choice.

I mean in choosing a trustee who will eventually handle the estate.

4th. That the debtor be allowed the privilege of choosing one-third of the inspectors.

Not because we want him to have the control over the administration of the estate, but in order that he may have some one there sitting with the inspectors, as inspector, to represent his interests.

Coming back to the Superintendent of Bankruptcy.

Superintendent: Our association is among those who have suggested the appointment of a superintendent and the licensing of trustees; and we believe that the superintendent should be given as much authority as possible; in our opinion, he should be allowed to go as far as investigating into the performance of the duties of the Official Receivers, Registrars and all the other Court officers who have anything to do with the administration of the Bankruptcy Act.

Hon. Mr. LAPOINTE: Is that the same suggestion as Mr. McQuarrie offered?

The WITNESS: For one part. The recommendation regarding the appointment of a trustee by the debtor is principally supported by our western provinces; whereas we in the east would have been satisfied if the debtor had been allowed the privilege of choosing one-third of the inspectors, in order that he may have somebody there to see to the administration of the estate.

Needless to say that we are in favour of sections 25, 26 and 28 of the Bill, amending sections 56, 57 and 78 of the Act.

Persons Not Entitled To Vote: Although we perfectly realize that the intention of those who have drafted the section 31 of the Bill was to prevent fraudulent claims, we respectfully submit that it will have no effect in the real cases of fraud; and that on the other hand it will be detrimental to the interest of bona fide creditors in many cases.

This section 31 states that certain classes of relatives, the father, mother, wife, husband, son, daughter, sister, brother, uncle or aunt of the bankrupt or authorized assignor shall not be entitled to vote on the appointment of a trustee at the creditors' meeting. We simply submit that in practice that would not be a remedy, because the class of fraudulent bankrupt, that we generally qualify by the name of professional bankrupt, will just as well manage to have fake claims from any of their friends as well as they could have them from relatives; therefore we respectfully submit that this would not be any remedy of the situation.

The ACTING CHAIRMAN: Is that all?

The WITNESS: Yes, sir.

Mr. CARMICHAEL: I think, Mr. Messier, this suggested amendment in section 31 of the Bill was recommended by the Bar Association.

The WITNESS: I think section 31 has been recommended by the Bar Association.

Mr. GRUNDY: Yes, Mr. Chairman, I can answer that question, it was.

The ACTING CHAIRMAN: That will do, thank you very much.

M. ALDÉRIC LALONDE, de Rigaud, président de l'Union catholique des cultivateurs de la province de Québec, comparaît.

The ACTING CHAIRMAN (Mr. MacDonald): Would you indicate the nature of your experience, Mr. Lalonde?

M. LALONDE: Je viens ici à titre de président de l'Union des cultivateurs. Après avoir, en différentes occasions, discuté certaines phases de la loi de faillite avec les membres de notre association, nous considérons que cette loi est préjudiciable au crédit du cultivateur.

M. Dubois:

Q. Dans la province de Québec, surtout? —R. Oui, dans la province de Québec, en particulier, puisque nous l'habitons.

L'hon. M. LAPOINTE: Le témoin ne peut rien connaître quant aux autres parties du pays.

M. LALONDE: Elle est préjudiciable, car les prêteurs ayant quelques surplus de capital dont ils pourraient disposer pour aider le cultivateur craignent de le lui prêter au cas où l'emprunteur se mettrait en faillite quelques jours après. Car, il est arrivé, à différents endroits, que des cultivateurs ayant obtenu des emprunts pour payer des obligations courantes ont fait faillite ensuite. Ceci est regrettable et fait naître une crainte chez ceux qui ont du capital.

D'un autre côté, je considère que cette loi prête à des abus par certains syndics. Il est vrai que la loi interdit aux syndics de solliciter quelqu'un à faire faillite mais s'ils ne le font pas eux-mêmes ils ont des agents qui le font pour eux. Je suis informé que dans la paroisse de Saint-Jérôme, en une seule journée, l'agent d'un syndic a induit 5 cultivateurs à faire faillite. Ceci est fait le plus souvent en les induisant en erreur et en leur exposant le fait que s'ils font faillite toutes leurs dettes se trouveront payées. On les tient sous cette fausse impression. Comme un grand nombre de cultivateurs ne sont pas au courant de la loi, plusieurs se laissent prendre et ils constatent, après le règlement de la faillite, qu'ils sont encore endettés. Seuls les créanciers ont perdu; celui qui a fait de l'argent c'est le syndic.

L'hon. M. Lapointe:

Q. Et, selon votre expérience, les cultivateurs qui ont recours à la faillite, agissent ainsi, généralement, parce que quelqu'un vient les solliciter? Ils ne le feraient pas sans cela?—R. Je n'en connais aucun qui ait agi de lui-même.

Q. Et ceux qui font faillite le font à cause de cette sollicitation? —R. Oui, seulement parce qu'ils sont sollicités...

Q. Par des gens qui veulent bénéficier...?—R. ...de la faillite. Je ne dirai pas que ce sont les syndics eux-mêmes qui font de la sollicitation mais ils envoient des agents pour la faire pour eux. Nous en avons eu un cas dans Rigaud; certainement que cet individu, s'il eût été au courant de la loi, n'aurait pas payé toutes les dépenses du syndic pour, en plus, régler ses dettes à 80 cents dans la piastre; il aurait certainement pu financer son affaire sans faire faillite.

(L'hon. M. LAPOINTE fait un résumé en anglais des réponses précédentes.)

M. LALONDE: Après ces quelques remarques, nous demanderions au Gouvernement d'amender cette loi de façon à ce que le cultivateur ne puisse pas s'en prévaloir. S'il devient submergé par ses dettes, il sera vendu par le shérif ou par ses créanciers; mais qu'il ne puisse pas faire faillite sous la conduite d'un syndic. Nous demandons cela afin de protéger nos cultivateurs et conserver leur crédit. C'est à peu près toutes les suggestions que j'avais à faire.

By the Acting Chairman (Mr. MacDonald):

Q. I suppose that is the one feature you wanted to put before the Committee?—R. Oui, monsieur.

By Mr. Carmichael:

Q. How many farmers are there in your Association?—R. 16,000.

Q. Is that the considered view of your organization or your own personal view?—R. Nous avons un congrès annuel où tous les cultivateurs sont invités à venir discuter les questions agricoles et exposer leur manière de voir; chaque année ce congrès réunit environ de 1,000 à 1,500 cultivateurs et, depuis trois ans, nous y adoptons une résolution demandant aux autorités fédérales d'amender cette loi.

L'hon. M. Lapointe:

Q. A l'unanimité?—R. A l'unanimité.

J. W. Cyr, called.

The Chairman: Just indicate, Mr. Cyr, what your experience is and whom you represent.

The Witness: Mr. Chairman and gentlemen of the committee, I represent the Association of the Sheriffs of the province of Quebec, and am ex-chairman of the board of St. Jerome. In my territory and with my experience of sixteen years as sheriff in the district of Terrebonne, I have found out that the bankruptcy law is terrible for the farmers. During the last few years some of them have become educated as to the result of that law, and that is the reason why so many of them go into bankruptcy, because they are canvassed to do so by certain agents in my district specially, that I know. Some of the agents from Montreal go around among farmers and business men and offer to loan them money to settle up their trouble. They see in their reports that they have got some lawsuits against them and they go to the farmers or to the business men and offer them money to settle up their case. So the farmer or the business man finds out that it may be interesting for him. Then this agent asks him to make an inventory of his debts and of his assets. So they make that inventory, and when it is made they find out that it is no use. Then they try to put them in bankruptcy. That is their way of doing.

In other words, many trustees of Montreal have special agents here and there in the country soliciting farmers and business men to go into bankruptcy and get rid of their debts.

Now, gentlemen, I am in favour, and our Association is in favour of having a Superintendent of Bankruptcy and having inspectors. We have read the report of your proceedings and I find there is some difficulty about that. Will you allow me to suggest some ways to pay the expense that the Government may be obliged to assume? In our case we pay the Province of Quebec 20 per cent of our salary and fees over $3,000. Suppose you charge a commission of 20 per cent on all the trustee gains over $4,000. Then trustees will have to make a report of their annual income, and the inspector could control them and see how they manage their books and administer the law and deal justly.

It is well known that the sale of immovable properties made by trustees costs a lot more than it costs by the sheriff. The reason is this; the Government of Quebec charges commission of two and a half per cent, and one per cent to the jury fund, that is three and a half per cent. The trustee's commission is five per cent. Besides that he has his travelling expenses and disbursements. That makes the cost sometimes ten or twelve per cent and sometimes more on the sale price of the property. They charge ten per cent on the sale of immovables, that is the auctioneer's rate. As sheriffs in the Province of Quebec when we sell the property we deposit the money, make a judicial deposit and we receive the check from Quebec. Is it not as necessary in the important matter

of bankruptcy that the trustees as soon as they have made their sale, as soon as their statement is made and taxed by the registrar of each district, a copy of that statement should be sent to the Minister of Justice at Ottawa, and a deposit of the money that he is to distribute be made in the bank and send in official receipt to the Minister of Justice. So the trustee would not hold the money. I think there is one of the most important things. In that case you would have all good trustees, no doubt about them, because they would not hold the money anyway, as soon as the sale is made they have to make a report that they have received the money on such a date and have to deposit it with the Government at such a date.

By the Acting Chairman:

Q. What is the benefit of depositing the money instead of distributing it? They are supposed to distribute it to the creditors, you want them to deposit it in the bank to the credit of the Government?—A. And then the Government make an official cheque.

Q. You want the Government to distribute the money instead of the trustee?—A. The Government sends the money to the trustee as the Government sends it to the sheriff, and the sheriff endorses the cheque makes an entry in his books that such a collection was made by a cheque of such a number at such a date.

Q. Would not that increase the cost of administering estates?—A. Well the Government could retain one per cent on the collocation according to the dividend to be paid.

Q. I am afraid the creditors would not be satisfied.—A. Well it would not cost any more, because on each bankruptcy the trustee has to pay for a bond, and if he had fifty bankrupteies to settle he had to give fifty bonds, which means five or six hundred dollars.

Q. You are in favor of the appointment of a superindent of bankruptcy?—A. Yes.

Q. And you think he ought to be paid by the trustees allowing him an additional percentage over a certain amount?—A. Well the Government could put a tax of one per cent on all collections. That is what is done in Quebec.

Q. But he would be appointed by the Federal Government.—A. Well the collocations would go to Ottawa, that would pay a certain part of the cost.

By Mr. Girouard:

Q. I understand your meaning is that if the trustee does not hold the money the estate would be settled more quickly.—A. Yes, because if the inspector is appointed the trustee will make his report in due time.

Q. Whereas to-day they hold the money two years or more.—A. We have to make our report as sheriff six days after the sale is over, and we have to report where the money is.

Some one told me this morning that it would not be in the interest of the creditors if all the property was sold by the sheriff. We advertise our sale thirty days before it takes place, so that the real prospective buyers have thirty days to look and provide the money to buy. When we sell the property, if we are dealing with a man who is a good man we only charge him ten per cent cash of the price of the property. If we sell a property of $5,000 we ask him $500 and give him six weeks to pay the balance, because a man may not want to have the money on hand unless he buys.

Now Mr. Chairman, I support Mr. Messier and Mr. Lalonde in their suggestions, I hope they will be considered in that important matter.

Mr. Lalonde was talking a minute ago about mortgaged properties. You lawyers and business man know that when a farm is mortgaged over 50 or 60 per

cent the farmer only holds the property, he does not own it, the mortgagee is the real owner of the farm. It is the mortgage owner who should say in what way the property should be sold. We sheriffs in Quebec only charge three and a half per cent no matter how much the property is.

By the Chairman:

Q. Do you charge the same whether it is $500 or $5,000?—A. Three and a half per cent on the amount of the sale.

By hon. Mr. Lapointe:

Q. You say you support Mr. Lalonde's and Mr. Messier's view with regard to farmers being excluded from the operation of the law?—A. Yes. Now I have just met one of the biggest store keepers in my district about a month ago and he told me that in his parish where I was born he had to refuse credit to about 50 clients. He says, I know they are good—

Q. All farmers?—A. Farmers, but, he says, in about a month from now they may not be good, on account of this bankruptcy Act. In my territory, since three or four years about 30 or 40 farmers have gone into bankruptcy, and the credit of the farmers is all gone. Too bad for them. And the great great majority of the farmers protest against that abuse.

The Acting Chaiman:

Q. I do not see why a farmer should not be allowed to go into bankruptcy as well as any one else. Your Quebec farmer is just as honest as any other man, why should he not be able to go into bankruptcy if he feels he cannot pay his debts?—A. When a man has to go into bankruptcy it is because he does not own much, because he is badly in debt. If he cannot pay 50 or 60 or 40 per cent of his debt he cannot fixt it up. There is always a way if a men is really a good citizen, has the confidence of his fellow citizens he can find a way. In my experience as sheriff, and since thirty-five years in my business—I was a bailiff before—I can tell you that with many parties it is not tender fault, and with the balance it is mostly always their fault, abuse of this or that, and not working or something else.

By Mr. Turnbull:

Q. If the Department were to licence reputable trustees only, and cancel their licence if they caught them soliciting bankruptcies, would not that settle all the troubles of the farmers in Quebec?—A. It would certainly protect them.

Mr. GIROUARD: But it would not restore the confidence the farmer had before the bankruptcy law was in force.

By Mr. Carmichael:

Q. You also said that both farmers and business men were solicited by these trustees. Do you find the same evil among business men, then?—A. Yes, the same. There are so many trustees now in Montreal that they have agents here and there in the bigger centers to solicit bankruptcy.

Q. And you find business men falling for them just like the farmers?—A. Sure.

Q. Then the evil is not with the farmers desiring bankruptcy, the evil is the trustees doing the soliciting?—A. Oh, sure.

Mr. CARMICHAEL: The remedy is to cure the soliciting.

By Mr. Girouard:

Q. That would be one cure, if the trustees were licenced, but do you believe that the bankruptcy law enforced would have the effect of restoring the credit the farmer had before, even if we have licenced trustees?—A. In my opinion a

farmer who has to go into bankruptcy it is because his property is loaded up with mortgages. And when his property is loaded with mortgages his machinery, his automobile, his truck, his tractor, are only half paid for or partly paid. That just happened two months ago, in the case of a farmer who was supposed to own around $20,000 worth of property. When they made the inventory they found that he was not owning hardly anything, because he owed on all that he had.

Q. You said a merchant in your place had refused credit to 40 or 50 farmers in the locality because he was afraid these farmers would go into bankruptcy.—A. Yes. You see some agents, not all agents or trustees, go to a farmer and say: Put yourself in bankruptcy and we will discharge you of your debts, and it is with that expectation that they consent to go into bankruptcy. But when the sale of the property is made it is not the same, it turns out otherwise; when the bankruptcy is all settled the party goes to the trustee to get a discharge and the first thing he knows the trustee will ask him $300 or $400 to get the discharge of his debts.

T. D'Arcy Leonard, Toronto, called.

Mr. Leonard: Gentlemen, I am appearing to-day on behalf of the Dominion Mortgage & Investment Association, representing particularly the Trust Company members of that Association; an Association comprising trust companies, life insurance companies and loan companies throughout Canada.

Trust companies are authorized trustees in bankruptcy, and have been carrying on that business throughout Canada since the Bankruptcy Act. My instructions are, in brief, that the bill as drawn has the approval in principle of the people I represent. They approve of the creation of a department under a superintendent of bankruptcy, and of the licensing of trustees. They believe that a great many of the abuses to which the Bankruptcy Act has been subject are due to dishonesty and inefficiency of trustees in administering estates, and that the creation of a licensing system and the establishing of a Department for some kind of supervision and check is desirable.

By Mr. Turnbull:

Q. If licenced trustees were appointed by some branch of the Government, and due regard had as to the reputable character of those they licence, and if creditors themselves would exercise their rights under section 37 of the Bankruptcy Act to see that estates were only handled by reputable trustees, should not that take care of the situation, without asking the Government to spend a lot of money?—A. Well I think experience has shown that something more is necessary than has been the case. It seems to me there must be some authority to supervise licensing in the first place.

Q. Yes I agree.—A. On the question of expenditure, the idea I have after discussion with our companies is that we find as trust companies throughout Canada that we have first to qualify. We have got to show financial standing—

Q. Apparently there are some down in Montreal who are not very well qualified?—A. Well I cannot speak as to Quebec Province. In the other provinces we do, and thereafter we do not have to file a bond, that is supposed to be our business, we have qualified financially in the first place.

Applying that principle, which I think is applicable in the bill, we can do away with the individual bond required for individual estates. That saving alone would pay for the cost of administration of your Department of Bankruptcy.

Q. Cannot that saving be accomplished without setting up a department to supervise bankruptcy? That is, cannot the Department issue certificates to licensed trustees after having satisfied themselves as to their financial reliability,

and then save the money you are talking about without setting up a whole department?—A. There must be some machinery to start with. It may not be necessary to go to any great detail, it is a matter of keeping check. It seems to me the primary thing is in the first place when the trustee is being licensed, if you require financial standing and get as much information as you can as to his integrity and his efficiency.

We think the security to be deposited should be actual, tangible security, not merely a guarantee bond, though perhaps supplemented by a guarantee bond. But as it stands now the individual trustee is not risking his own money whe he puts up a guarantee bond. He can get a guarantee bond almost automatically, the guarantee companies simply issue a bond on the request of any trustee.

Q. That is contrary to my experience. Suppose I walked into a guarantee company, that I am financially worthless, can I just pay the fee and get the bond?—A. I do not say you can if you are worthless, but I say that as it works out in practice, once a trustee has got established and gained some confidence, the bond is issued almost automatically. Guarantee companies are anxious to get business, apparently, and as I understand Mr. Varcoe stated in his evidence the other day, when they find there is any difficulty they simply cancel the bond. The bond itself seems to me is not sufficient protection for the creditors. If the man has actually put up some of his own securities, the same as is required in connection with fire insurance companies and other companies, you are suggesting here, and I think quite properly, that where the people of this country have to entrust to certain individuals money and property, and you are issuing licences, saying that only certain persons shall do such a business as that, then they should be ready, seeing it is their business, to show they are financially able to do that. It does not mean they have to put up an amount equal to 100 cents on the dollar, the mere fact that there is an actual risk of their own money supplemented by a guarantee bond probably in most cases, with the supervision and check of the superintendent, who can increase or decrease it as provided by the Act, then you do away with your individual bond, you do away with the question whether or not the bond is good if sued upon or good without being sued upon. That is the way it works out in connection with the administration of estates, the individual has to put up a bond, but a trust company, when it receives a licence from a province or the Dominion to do business qualifies first of all, and then is supposed to be capable of doing that business.

By the Acting Chairman:

Q. Is not that likely to increase the expense? For instance you have a trust company in Toronto undertaking to administer an estate in Ottawa, you have to appoint some one here to represent you, haven't you, and you have to pay that person wages as trustee?—A. I presume in ordinary cases a trust company in Toronto would not be nominated. I am not suggesting that it should be confined to trust companies. There would be no difference under my suggestion from the present situation, a trustee takes what business he can get. Sometimes it involves out of town work of course, but that is all in the run of the business.

Q. Doesn't it run into money?—A. If you take some one in Toronto instead of a local trustee.

Q. I presume if the department is set up and a superintendent appointed he is going to pass on the qualifications of every man who seeks to be licensed as trustee?—A. Yes sir.

Q. I think that should be sufficient.—A. I think experience shows that there are sufficient men who can qualify as honest efficient trustees, financially

responsible, throughout Canada. As it stands now there is merely an individual bond required in any estate, there is no real financial standing required of the individual trustee. I think that is rather important when you consider that the Dominion Department undertakes to license a trustee and give him authority as a special class to do this particular business.

The Acting Chairman: Have you any knowledge as to the exercise of their duties by official receivers, taxing masters, registrars, etc.?

The Witness: We have no particular representations to make outside of one or two minor suggestions. In connection with the taxing of disbursements, we feel that the amendment suggested is desirable, namely, that the disbursements shall be taxed without any question of waiver. And in that connection it was our thought that possibly it should be brought to the attention of this committee, at any rate, that some standard should be set up as to what are proper disbursements. Certain trustees on taking over an estate employ help to do work, and charge the cost of that work as a disbursement. Other trustees do that work themselves.

The Acting Chairman: Such as the taking of inventories?

The Witness: Yes, and it is not fair that there should be a differentiation. It may be improper that the one man should charge it as a disbursement, or it may be proper that the other man should be allowed a fee. I do not say which it should be.

Hon. Mr. Lapointe: He gets somebody else to do his work and charges it as a disbursement?

The Witness: Yes, sir. The feeling of the trust companies is that there has been too much in the way of disbursements which should be charged in the trustee's fee. The suggestion was made that this section, dealing with the taxation of disbursements, should go further and state that the taxing officer should take into consideration whether or not the disbursements were for services which should have been rendered by the trustee and included in his fee. But it is very difficult to actually put that in black and white. We do suggest that for the consideration of the superintendent, if the Bill goes through and the scheme is adopted, that some standardization of proper disbursements should be set up.

There are one or two other minor suggestions, Mr. Chairman, and I might mention them. On the first page of the Bill, section 2, dealing with the amendment which extends the meaning of "secured creditor" to include persons whose claims are on a negotiable instrument for which the debtor is only indirectly or secondarily liable. The principle of that amendment is good. Our only suggestion is that it should not be confined to negotiable instruments. There may be other instruments, such as mortgages, upon which the debtor is only secondarily liable. There should be no question which could arise that the creditor should claim for 100 cents on the dollar without bringing into question his security; and the suggestion there is that the words "negotiable instrument" be changed to "any instrument." For instance, if a man claims against the estate, where the estate is only secondarily liable, that he should bring in his security into the bankruptcy.

The sections dealing with the registration of title have the approval of the members of our association.

Section 36 I have dealt with in discussing the question of bond. Simply that the individual bond should be done away with, and the trustee when qualifying should put up actual, tangible security showing he will have an actual stake in the conduct of the business, plus a general guarantee bond covering all his administration. The cost of that is $5 per $1,000. The statstics will easily show to what extent those bonds have been enforced or liability has been created of the individual, and how often have been defaulted on. Five Dollars, I understand, will cover the administration of the Department of Bankruptcy.

It does seem to me that you need both the department and the individual bond, if you first see to the financial standing of the trustee.

Section 23 is a section dealing with Quebec. I have received one suggestion from a member of the association in Quebec. I am not familiar with Quebec law, and I simply pass it on to you. The sentence beginning in line 37, dealing with the sale of a secured property in Quebec says that "The sheriff shall carry out such direction without giving any notice to the bankrupt or assignor or to the trustee, but shall otherwise observe the provisions of the code of procedure of the province of Quebec." The suggestion which is put forth here is that that sentence shall read, "The sheriff in carrying out such direction shall observe the provisions of the code of procedure of the province of Quebec."

I gather that the purport of that is that there shall be no question perhaps of conflict of jurisdiction, but that the code of procedure of Quebec shall govern.

Another amendment from the same source is at the end of subsection 10 of the same section, which provides that in case of sale of immovable property the remuneration of a trustee shall be fixed upon the amount distributable among ordinary creditors. The amendment that is suggested is that " and no part of such remuneration shall be charged to the mortgagee which shall be charged to the court creditor." I presume that is the effect of the present amendment, but this is a further suggestion.

Those are the only suggestions I have, and I merely repeat, in conclusion, that we are in favour of the principle of the licensing of trustees, as set out in the Act.

The Acting Chairman: And the appointment of a superintendent?

The Witness: And the appointment of a superintendent.

The Acting Chairman: What do you say about the payment to the superintendent, should it be borne by a Government charge, or should it be borne by the estates?

The Witness: The Bill as now set out provides for a charge against the assets of the estate. My view is that that should stand. The assets, if they can be saved the payment of the premium on the guarantee bond, will be no worse off. Instead of paying a lot of individual premiums, throughout the whole of Canada, you use that money for the establishment of the department, plus the actual security provided by the individual trustee.

Mr. Turnbull: Mr. Leonard, section 38A provides the duties of the superintendent. Have you given any consideration to the amount of responsibility that this supervision would involve the superintendent and the Government in?

The Witness: It is a very large question, sir. Possibly the wording is too broad. I do not think it means it is necessary to set up an actual audit or checking of all individual estates. It seems to me it is more a matter of the scanning of returns, hearing of complaints, and keeping a general check, somewhat similar to what is done with loan and trust companies, but not necessarily to the same extent.

Mr. Turnbull: Clause D of subsection 3 also puts upon the superintendent the duty of from time to time making or causing to be made such inspection of the administration of estates as he deems expedient. That in connection with the supervision seems to me to put a very wide responsibility upon the superintendent.

The Witness: I do not think you can get away from the fact that there is a definite responsibility placed upon him, but I do not think there is a greater responsibility placed upon him than other Government officials have.

Mr. Turnbull: I think a very much less responsibility than they had in connection with the Home Bank at one time.

The WITNESS: I do not think there is as much check upon the banks, probably, as upon some other classes. Possibly that might be narrowed down so that it would be a permissive power, without it being put in the nature of throwing a definite responsibility upon the superintendent.

Mr. TURNBULL: What would you think of that section being struck out and it being left upon the responsibility otherwise in subsection 3.

The WITNESS: That might be, or upon the request of somebody he might go in; so that no one could argue in case an estate or a trustee goes bad, Well, you should have done so and so.

VALMORE A. DE BILLY called.

The CHAIRMAN: Just tell the Committee whom you represent and your experience.

The WITNESS: Mr. Chairman, I have been practising law in the city of Quebec for nearly twenty years. I represent certain wholesalers in Quebec and also certain trustees who have been acting as trustees for many years, in fact some of the firms have been going along for forty or fifty years, from father to son.

My intention is to draw the attention of the Committee to only two of these sections of the Bill. As to section 29, I have only a remark or two to make. It is said in subsection 6:—

> (6) Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a trustee in obtaining proxies or in procuring the trusteeship, the court shall have power, on the application of a creditor or otherwise, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the inspectors or of the creditors to the contrary.

The interests which I represent think that this might bring hardship if the clause remains as it is. In certain cases, a debtor of his own free will goes to a trustee and makes an assignment. The creditors or the principal interested parties in the bankruptcy might have objection to that trustee; they might want to solicit proxies for another trustee.

It has been said that trustees in Montreal were not acting as they should. The same thing might have happened at any other place. We think it might not be right to prevent interested parties who are creditors from soliciting proxies in favour of a trustee. If the section remains as it is, it might be said, in case a creditor solicits proxies for a particular trustee, that it has been done on his behalf. What we would suggest is that the section might read that the court officer might refuse costs in case it is proven that a trustee has solicited the assignment.

It has been said before the Committee this afternoon that certain trustees have agents going around enticing the farmers or merchants or others to assign. Well, I think, very humbly, that if the section empowered the taxing officer to refuse fees and costs to a trustee who has solicited the assignment, it will go far in stopping certain abuses which have been going on. That is the suggestion that I have to make under section 29.

The ACTING CHAIRMAN: Would that apply when the trustees are appointed by the government, if they have licensed trustees?

The WITNESS: The trustees will always be appointed by the creditor.

The ACTING CHAIRMAN: But there will be licensed trustees, and only those would be appointed.

The WITNESS: Yes, I think it could apply to those just the same. If they go and solicit assignments, the same rule might apply to them.

The ACTING CHAIRMAN: This Act does not actually deprive them, but it says that the court shall have power to order that no remuneration shall be allowed.

The WITNESS: But we are at the mercy of the interpretation which might be given by the court.

The ACTING CHAIRMAN: You would have to satisfy the court.

Hon. Mr. LAPOINTE: It is a discretion.

The WITNESS: Yes, but the court could find that the solicitation was made on behalf of a trustee, in case it is done by a creditor, because the creditor is soliciting on behalf of the particular trustee whom he wants to get appointed. I think that would come within the Act.

The other section, in connection with which I would like to make a few remarks, is section 23, which amends section 45 of the Act. If the section remains as provided in the Bill, in the case of immovables, on which there are registered privileges or mortgages,—

Mr. CARMICHAEL: Which section, do you say?

The WITNESS: Section 23 of the Bill, which amends section 45.

The result of this amendment would be that in the province of Quebec, in the case of an immovable which is subject to a privilege, the sale could not be made by the trustee but would have to be made by the sheriff. We humbly submit that it would be in the interests of everybody concerned that the trustee remain empowered to sell the immovable. There may have been some abuses, as has been said, but we think the amendment could be made which would protect in any case the mortgage creditor.

If the trustee is prevented from selling the immovable, the cost of realizing in the bankruptcy will fall on the ordinary creditors; everything will be paid on the immovables, and the mortgage creditor will have more privileges than he would have under a common law action. If he wanted to realize on a $2,000 mortgage, he would naturally have to take an action, incur costs, go to the sheriff, and all these costs would be taken on the proceeds of the sale; while, if the immovable belongs to the bankrupt, he will not have to pay any of those costs but he would only have to pay the sheriff's costs. It may be that 5 per cent in certain cases, which is the maximum allowed by the tariff, actually may be too much; but I would respectfully submit that it could at least be said in the law that, if it is the intention of preventing too high costs against the mortgaged property, that the costs in the case of a property which is mortgaged would not be higher than the costs which the first mortgage creditor would have to incur on an ordinary ex-party action to realize his security. If the trustee remains with the power to sell the immovable in these cases, as in others, I submit that this would unload the other creditors.

If the whole costs of the bankruptcy, of the assignment and of the realization of the assets, notices and everything, are borne by the immovables, it is to the detriment of the ordinary creditors; and I think that the mortgage creditor will not suffer any prejudice because, in any case, if he wanted to realize his mortgage, he would have to take proceedings, which would mean costs.

It has been said before the committee this afternoon that the sheriff costs $3\frac{1}{2}$ per cent, and that the trustee costs 5 per cent. Well, the Act as it is does say that the maximum fee of the trustee is 5 per cent. If it is the maximum, it could be very well said that in certain cases this tariff might be lowered. That is a question which this committee might examine into.

I submit that the trustees are a necessary instrument to the operation of the bankruptcy law. I think that we have provided that all the trustees are trustworthy and honest and do their duty, and it seems to be the opinion of everybody that with more supervision, with the superintendent of bankruptcy and with the licences which will have to be given to the trustee, we may get more satisfaction.

I submit in that case there would not be any reason to deprive completely the trustees from realizing on the immovables.

The Acting Chairman: Does any member of the committee wish to ask any further questions?

The Committee adjourned until Thursday, April 21st, at 10.30 o'clock a.m.

SESSION 1932

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 41, AN ACT TO AMEND

THE BANKRUPTCY ACT

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

THURSDAY, APRIL 21, 1932

WITNESSES:

Hon. Adelard Godbout, Minister of Agriculture for the Province of Quebec; Colonel Sydney Band, Vice-President of the Fidelity Insurance Company, Toronto; George S. Houghan, Esq., Provincial Secretary for Ontario Retail Merchants' Association, Toronto; Harold J. Inns, Esq., Manager, Better Business Bureau, Inc., Montreal; F. W. Wegenast, Esq., representing the County of York Law Association, Toronto.

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1932

MINUTES OF PROCEEDINGS

COMMITTEE ROOM 231,
THURSDAY, April 21, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met at 10.30 a.m., the Chairman, Mr. Hackett, presiding.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Gobeil, Spence, Kennedy (*Winnipeg South Centre*), Turnbull, Fraser (*Cariboo*), Butcher, Elliott, Lapointe, Mackenzie (*Vancouver Centre*), Speakman, Carmichael.—13.

In attendance: Hon. Adélard Godbout, Minister of Agriculture for the Province of Quebec; F. W. Wegenast, Barrister, representing the County of York Law Association; Colonel Sydney Band, Vice-President of the Fidelity Insurance Company, Toronto; George S. Houghan, Esq., and F. H. Boselly, Esq., representing the Ontario Branch of the Retail Merchants' Association, Toronto; and H. J. Inns, Esq., General Manager of the Better Business Bureau, Montreal.

Were also present, Messrs. H. P. Grundy, Henry Detchon and A. S. Crighton, Winnipeg.

The Honourable Mr. Godbout was called, and commented upon the Bankruptcy Act as it now stands, and on the proposed amendments thereto, as affecting the farming community in the Province of Quebec. Witness questioned and retired.

Mr. Band was called and referred specially to Section 18 of the Bill before the Committee, suggesting certain amendments thereto. With regard to witness's observations, Mr. Grundy submitted a proposed amendment which was read into the record. Witness retired.

Mr. Houghan having been called, submitted a memorandum on behalf of the Ontario Branch of the Retail Merchants' Association. Witness answered questions and was retired.

Mr. Innes, the next witness, gave evidence on behalf of the Montreal Business Bureau, approving generally the proposed Bill No. 41, and suggesting some further amendments thereto.

In the course of proceedings Mr. Carmichael laid before the Committee a Memorandum on behalf of J. E. Couture, Esq., Hull, Que., Member of the Institute of Accountants for the Province of Quebec. By direction of the Committee this was filed in the records.

A final statement of receipts and disbursements in the matter of the estate of L. M. Zavitz, of Punnichy, Saskatchewan, Bankrupt, was also brought before the attention of the Committee by Mr. Butcher and ordered to be filed in the record.

The Committee then adjourned to resume at 3.30 this afternoon.

AFTERNOON SITTING

The Committee resumed at 3.30 p.m., the Chairman presiding.

Members present: Messrs. Hackett, MacDonald, Ganong, Spence, Turnbull, Fraser, Butcher, Elliott, Lapointe, Speakman.—10.

In attendance: Mr. F. W. Wegenast, Toronto, representing the County of York Law Association.

Were also present: Messrs. H. P. Grundy, Henry Detchon and A. S. Crighton, Winnipeg.

Mr. Wegenast was called and gave evidence, particularly on the appointment of a Superintendent of Bankruptcy as proposed in the Bill before the Committee. Witness questioned and retired.

The Chairman informed the Committee that a few other witnesses, including Mr. G. D. Finlayson, Superintendent of Insurance, Ottawa, and Mr. Maréchal Nantel, K.C., Montreal, had been invited to appear before the Committee at its next sitting, and that the Committee might possibly conclude the hearing of evidence at that meeting.

By unanimous consent, the Committee then adjourned to resume Tuesday morning, April 26, at 10.30.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 231,
APRIL 21, 1932.

The Special Committee on Bill No. 41, an Act to Amend the Bankruptcy Act, met Thursday, April 21, at 10.30 a.m. Mr. Hackett presiding.

Mr. CARMICHAEL: Mr. Chairman, before you start I have a letter and memorandum handed me by a former member of Parliament embodying the views of Mr. Couture of Hull. If it is agreeable to you I will file it.

I might say Mr. Couture is just endorsing the evidence given by Mr. Clarkson, and it will avoid calling him for further evidence.

MEMORANDUM SUBMITTED BY J. E. COUTURE, HULL, QUE.

MEMBER OF THE INSTITUTE OF ACCOUNTANTS FOR THE PROVINCE OF QUEBEC

Practising as liquidator and trustee for over 22 years and handling the majority of assignments in the western part of the Province of Quebec, namely district of Hull and Pontiac

I, the undersigned, respectfully submit to your Committee that:—

I concur with Mr. G. T. Clarkson's comments and remarks on the proposed Amendment Act. Superintendent of Bankruptcy not necessary, but if accepted, should be along the lines suggested by Mr. Clarkson, with limited power, and right of appeal to Court from unsatisfactory decisions.

Trustees of over five years practise should be entitled by law to be licensed, and removed afterwards if incompetent. This, to avoid political influence.

Sections 2, 4, 7, 8, 10, 11, 15, 17 and 24 of the Bill are good improvements to the Act.

Section 23, concerning sale of mortgaged properties in Quebec, by the sheriff, should be amended to leave to the Inspectors to decide whether sale should be made by the trustee or the sheriff, because sometimes, according to my experience, it is more advantageous that the sale be made by the sheriff.

Section 29, concerning no remuneration to trustee in case of solicitation of proxies, is unsatisfactory, for the reasons given by Mr. Clarkson. The very way to stop this solicitation practise will be to amend the clause in the Act ordering the custodian to mail list of creditors with his notice of assignment, but list of creditors to be prepared and delivered at the first general meeting of creditors.

Section 31, creates a grave injustice. It has the effect of putting the wholesale dealer in a privileged class towards other creditors. According to this section, the widow who gets a life insurance indemnity of $10,000 from the death of her husband, gives $5,000 to her son to start him in business, the sister will intrust her economies to help her brother in business, but they won't have anything to say in the winding-up of the son or the brother's estate. It is the wholesaler, the manufacturer who sold a case of shoes or a bag of sugar who is going to run the place. Why not put everybody. That is every creditor, on the same footing, consid-

ering also that many manufacturers have their accounts fully protected by Credit Insurance Companies, like the National Surety Company, the American Credit Indemnity, etc.

I approve of amendment sugested by Mr. H. P. Grundy of Section 36 by adding subsection 3 covering new scale of fees for the trustee in small estates.

I also think that Mr. Brasset, Bill No. 36 should be incorporated in the Amendment. As a result of the Boily-McNulty case in Supreme Court, the law should be amended so that a petition in bankruptcy should be presented in the Court of the District of the debtor. This is the very way to reduce costs.

(Sgd.) J. E. COUTURE, L.Q.C.

Dated, April 19, 1932.

The CHAIRMAN: The Committee will remember the communication we got from the Toronto Board of Trade. I have written them another letter to say that if they have any other witnesses to be heard they better arrange for their attendance, because we seem to be making good progress.

We are going to have two or three gentlemen from Montreal, who are particularly anxious to be heard, they will be here at half past eleven. A number of others to whom we have sent telegrams have by silence intimated that they are not coming.

We have with us this morning Mr. Godbout, Minister of Agriculture for the Province of Quebec. I think it would be opportune to hear him first. (Agreed).

Hon. A. GODBOUT called.

Would you rather testify in French or English, Mr. Godbout?

Mr. GODBOUT: I talk French much more easily.

The CHAIRMAN: Well you talk English quite as accurately at any rate, and I dare say all members of the Committee are not as familiar with French as they are with English. However, the option is yours.

Mr. GODBOUT: I have no objection to trying to speak in English.

By the Chairman:

Q. You are the Minister of Agriculture for the Province of Quebec?—A. Yes, Mr. Chairman.

Q. Before you take up the main theme will you say that is the attitude of the agricultural class towards the Bankrptcy Act, what you think of the suggested amendment to the Bankruptcy Act by the terms of which a superintendent of Bankruptcy would be appointed under the Minister of Finance, to whom all would-be trustees would have to apply for a licence, and by whom all trustees would be licensed. Does this amendment appeal to you as a reasonable way of curing some of the evils that obtain in the administration of bankruptcy?—A. Yes, as far as I know I think this would be a very good move, especially the licensing of trustees.

Q. I understand that the application of the Bankruptcy Act to wage earners and farmers, particularly the latter class, does not meet with general approval? —A. No.

Q. Will you kindly outline to the committee your views with regard to any possible amendment to the Act which might eliminate farmers from its operation?—A. First, I think that the farmers do not benefit by the Bankruptcy Act. It was given as a privilege to them, and I really think, and the great majority of them in Quebec think that it is against them, that they do not benefit at all by it, and that it is a great cause of lowering of their credit.

I think there would be two ways by which the farmers could be exempted; either that the farmers of the whole country be exempted from the law, or the farmers of the Province of Quebec only. It may be that the principle underlying the first move in the amendment of this law was to establish a law which would be the same in all provinces of Canada. That is good, but I do not think it is absolutely necessary to have a uniform law throughout the country. The first law, passed I think in 1864, was not applicable uniformly to all Canada. In Lower Canada at that time I think only dealers could avail themselves of it, the farmers were freed from the operation of the law. And as far as I know there were no complaints against that state of things. That is why I think there would be no great objection to having a special law for the Province of Quebec. If the farmers in the other provinces think it is for their advantage to have that privilege, well and good; in Quebec I think it is against the farmers. I think the law is logical, you offer the privilege to other classes, and it was logical to offer it to the farmers as well. But in fact not many of the farmers availed themselves of the law, and I think the great majority of those who did were invited to do so by would-be trustees, and I really think they did not benefit by it. I am told by lawyers who had to deal with the application of the law in Quebec that the great majority of the farmers who availed themselves of the law did not free themselves of their obligations, because all the conditions were not fulfilled.

Hon. Mr. LAPOINTE: They did not get their discharge?—A. They did not get their discharge, and this was of course losing money for many of their creditors.

By the Chairman:

Q. To what extent would the licensing of trustees and the elimination from the position of trustee of irresponsible people do away with the procuring of abandonment of property by farmers under the Bankruptcy Act for the alleged benefit of creditors?—A. I think this would help pretty well.

Q. I am told by many men who are used to framing Dominion legislation that there is a disinclination to cause a Dominion Act to have a different application in different parts of the country. If Quebec were exempted from the operation of the Act, a merchant in Ontario selling a bill of goods in Quebec might be led into error. He would not have the same privilege that he would have if he were attempting to collect from some one in his own province. Of course I know that even now a farmer cannot be put into bankruptcy, so your suggestion would only go to the extent of preventing a farmer who wants to avail himself of the Bankruptcy Act from doing so?—A. Yes. I think the farmer of Quebec is in a special position. He is a little less of a business man than the farmer of the other provinces. He has not many creditors, very few of them, and the operation of his farm is more of a domestic affair. I think I am safe in saying that the farmer in Quebec has no extra-provincial relation, very few, very very few. That is why I cannot see why there would be a great objection to having a special law. If convenient to the farmers of the other provinces I would certainly like better a law applying to all the provinces, to ours as well, and exempting the farmers.

Q. Throughout Canada?—A. Yes.

Mr. GOBEIL: May I say that question you have just raised of the inconvenience to farmers doing business in different provinces, that is the case now. I know for instance that a company selling farm implements or automobiles has to draft special contracts for the Province of Quebec.

The CHAIRMAN: That is because they have no chattel mortgage.

Mr. GOBEIL: Very likely, but still the condition would not be much changed.

Hon. Mr. LAPOINTE: If they are looking for business in Quebec they should adapt themselves to conditions there.

The CHAIRMAN: That question does not really arise here, because under the Act as it stands now it is impossible to put a farmer into bankruptcy. So a trader from outside the Province of Quebec would not be affected by this legislation, except beneficially.

By Hon. Mr. Lapointe:

Q. Under the Act as it is, an order of discharge does not release the bankrupt from any debt or liability for necessaries of life. Is it not a fact that the debts of the farmer, more particularly in Quebec, are usually for the necessaries of life?—A. Yes.

Q. And that they cannot get any discharge of them anyhow?—A. Yes.

Hon. Mr. LAPOINTE: So that takes away any benefit they might derive from the Act.

The CHAIRMAN: We have understood, from Mr. Speakman among others, that the objection he had to the exemption of the farmers from the application of the Act is that in his province the Bankruptcy Act is complementary to provincial legislation, and the provincial legislation would lose its teeth and sanction if the proposed amendment were made. Is that correct?

Mr. SPEAKMAN: Yes, something of that sort. In our province where the Debt Adjustment Act is in force, and where the Debt Adjustment Officer may be and is also appointed as the trustee in bankruptcy as a provincial officer, in the case of farmer estates they find that when the Debt Adjustment Officer goes to the creditors and attempts to secure some compensation or arrangement under the terms of the Debt Adjustment Act, it frequently occurs that one or two of many creditors will take objection, not fall into line with the wishes of the majority, and in that case the recourse is plain, the Debt Adjustment Officer simply intimates to them that if they are obdurate he will put his man into bankruptcy.

The CHAIRMAN: He cannot put him into bankruptcy.

Mr. SPEAKMAN: He will put him into bankruptcy with the consent of the farmer, he will advise the farmer to go into bankruptcy. I will put it this way; the farmer is acting under his advice. And as the same officer is then acting as trustee it will perhaps be beneficial to the creditor to agree to the composition or arrangement that is agreeable to the remainder of the creditors. It puts teeth into the Act, acts as a threatened alternative, a weapon if you will, by which they can sometimes induce obstinate creditors to fall into line with the majority to enable the farmers to come under the Debt Adjustment Act. There is no legal compulsion.

The CHAIRMAN: I have been informed that the exemptions which apply to farmers who are in financial distress rather mitigate any benefit that might accrue to the creditor from a voluntary assignment of the farmer under the Bankruptcy Act.

Mr. SPEAKMAN: They do in the case of very small farmers, where the statutory exemptions would form a large part of the estate. That is not so much the case where a farmer is a large owner.

The CHAIRMAN: I am not familiar with the provincial legislation of the Western Provinces, but I have been led to believe that all equipment, including the stock necessary to the useful exploitation of a farm, is exempt. Can you say particularly if I am misinformed?

Mr. SPEAKMAN: Well the minimum quantity necessary is exempt. But that only forms a small part of the stock of any large farm.

I may say that in accordance with my conversation with the Chairman I sent a night wire to Mr. Brownlee and asked for any suggestions he might have

in this respect. I hope to receive them at any time. He is very familiar, both as framer of the special Act and the present Premier, with its operation.

Hon. Mr. LAPOINTE: Is it Mr. Godbout's opinion that the law has injured the credit of the farmers in Quebec?

The WITNESS: I really think so. Most of the farmers think so. About every one in the Province thinks so. There was a motion before the Provincial Legislature in 1931 that was passed unanimously asking for an amendment to the law.

Hon. Mr. LAPOINTE: Was the present Postmaster General a member of the Legislature at the time?

The CHAIRMAN: No.

The WITNESS: Not in 1931.

The CHAIRMAN: He was with us then.

By Hon. Mr. Lapointe:

Q. But I think there have been many movers.—A. Before, there had been a resolution, if not proposed I think seconded by Hon. Mr. Sauvé, he was always asking this amendment.

Q. There has never been a dissenting voice when these resolutions were adopted by the Legislature?—A. No, not in the House. Now it is a psychological case, people think that this law impairs the credit of the farmers.

By Mr. Carmichael:

Q. Might I ask if it has the same effect upon the business man who, I understand is solicited in the same way as the farmer to go into bankruptcy?—A. The business man is more of a business man than the farmer.

Q. That is true, but the fact that a number of them fall for these solicitations and go into bankruptcy, does it have an effect on their credit standing in the Province?—A. Not much I think.

The CHAIRMAN: That, Mr. Carmichael is one of the evils which it is said results from the indiscriminate appointment of trustees.

Mr. CARMICHAEL: Yes and I understood it fell as an evil upon both business and agriculture.

By Hon. Mr. Lapointe:

Q. The business man gets his credit from the banks as a rule. Is it the same thing with the farmers?—A. No, not the farmers, it is not the same kind of credit.

Q. They do not get the money they want from the banks but from fellow farmers and other people who have confidence in them.—A. Yes, and that is where the lack of confidence in the credit of the farmer is against the community as a whole. A farmer has as his source of borrowing local money, fellow farmers, little lenders of money. He needs that money. I think it is an advantage to the country that the farmer gets it, and for the time being this money does not go to the farmer, it goes to the city, and large industries. Those little lenders of money are not good investors, because they do not know much about industrial enterprises into which they put their money, and they are always ready to get it back, and the money which would render a very great service in the country is not very useful in industry. That is why I believe that the law as it stands, with the feeling that the people have about it, is against the interests of the community as a whole.

By Mr. Carmichael:

Q. Then the small business man doing business out in the rural parts, does he get his credit through the bank—A. Usually.

Q. While the farmer in the same community gets his from a brother farmer? —A. Yes, because he wants long-term credit, usually. Not for a month or two. Whether it is for the betterment of his system of culture, or buying some stock, or even buying some fertilizer, he could not get the return quickly enough to—

The CHAIRMAN: To satisfy the bank.

Mr. SPEAKMAN: It is obvious that the situation in Quebec is very different for the farmer than in the West.

The CHAIRMAN: It is different in more ways than one. Probably the principal way is that in Quebec it is impossible, with one or two exceptions which have no application here, to hypothecate or mortgage movable property. A farmer can borrow money on mortgage, but his herds, his equipment, what you call his property "roulant" can be taken and seized by anybody to whom he owes five dollars. I understand that in other parts of Canada it is possible to mortgage—

Mr. SPEAKMAN: Yes, chattel mortgage system.

The CHAIRMAN: —all movable property. That cannot be done in Quebec. Then another difference—and I ask Mr. Godbout to correct me if I am making too broad a statement—is that in Quebec we have in all our villages a class of men called the "rentier." He is the farmer between 45 and 75 years of age, who has made over his farm to the boy, and has gone into the village to be near the church. He has got three or four or five thousand dollars, and he lets that out, among people who have credit more because of what they are than of what they have got. That is peculiar to Quebec as I know it. And this Act has entirely undermined that source of credit.

Hon. Mr. LAPOINTE: They lend money without even asking for a promissory note.

Mr. SPEAKMAN: Because they know the man so well.

The CHAIRMAN: Because the "rentier" knows his people, he knows that although Mr. So-and-so is not very well off his credit is good.

Mr. SPEAKMAN: A good moral risk.

The CHAIRMAN: A good moral risk. And that source of supply to the farming community of Quebec has dried up, and Quebec thinks that one of the reasons is because the farmer may, under solicitation, yield to the allurement of the Bankruptcy Act.

Mr. SPEAKMAN: The situation seems to be so entirely different that it is difficult to make one law applicable to provinces where conditions are so entirely different.

The CHAIRMAN: It is a sociological difference.

Mr. MACDONALD: Yesterday we understood that the real difficulty down there was the farmers being solicited to go into bankruptcy. You cannot force a farmer in Quebec into bankruptcy, but he can go in if he wants to himself; and that they have been solicited by a number of these people who used to be trustees. If that class is eliminated altogether, and only reputable men appointed as trustees, will not that eliminate the difficulty down there?

The WITNESSS Not at all the difficulty I think, because there will always be some possibilities of solicitation, even with an accepted trustee. It is not the trustees themselves who do the solicitation, they have agents. I am told that in one county in Quebec now they offer a special grant of $100 for every case of bankruptcy that is brought to a bureau of trustees. I think the appointment of an officer who would investigate into the advisability of particular farmers going into bankruptcy would benefit very much. This would have a moral effect. It is a moral question. The credit of our farmers is based on

their moral standing, and consequently it is a moral question. People think, farmers and others, that the law is against the credit of the farmers.

Hon. Mr. LAPOINTE: And they do not consider the law as a privilege, but rather as a nuisance.

Mr. SPEAKMAN: Would not the appointment of a Provincial Officer to act as trustee, without costs, as it is in certain western provinces, to some degree offset the trouble that has been experienced in the solicitation by men who wish to be trustees?

The CHAIRMAN: Before you answer that, will you let me ask Mr. Speakman if he restricts his suggestion to farmers?

Mr. SPEAKMAN: Well it is so restricted in the western provinces. The Act simply states that in respect of those engaged solely in farming this provincial officer may be appointed and may act in that capacity.

The WITNESS: I think the nomination of this Provincial Officer at first would have had a very salutary effect. But I doubt what would be the effect now. I think there should be now an amendment to the Federal law, to get confidence in the farmers again.

The CHAIRMAN: And the source of their supply of money?—A. Yes.

By Mr. Kennedy:

Q. Will you express an opinion, Mr. Godbout, as to whether it is the desire of rural Quebec, of Quebec farmers largely, to be excluded from the operation of the Act?—A. Oh, yes, of the very great majority of them. In fact I have heard the opinion of only one farmer who thinks the law is "not so bad."

Mr. KENNEDY: Has any evidence been given that would indicate any special objection to not having the Act apply to Quebec farmers if they so wish?

The CHAIRMAN: There has not been, as far as communciations addressed to the Committee are concerned, a single objection to the amendment of the Act preventing farmers from availing themselves of it, from Quebec. Members of the Committee from other provinces have hesitated to express a final opinion until they could communicate with the persons in authority. In other provinces, as pointed out by Mr. Speakman it is used in his province to complement and give sanction to provincial legislation which might otherwise not be as effective.

Mr. KENNEDY: Yes, I appreciate that, but let us assume for the moment that the opinions expressed here and the weight of evidence is that in the western provinces the farmers should have the privilege of coming under the Act if they so desire. That being so, has any objection been put forth as to the exclusion from the operation of the Act of Quebec farmers if it is their general desire to be excluded?

The CHAIRMAN: I think Mr. Lapointe could speak to that with advantage. There is reluctance to enact legislation which does not apply to the whole Dominion. It raises all manner of susceptibilities and controversies and cross-currents of feeling, which are considered undesirable. If you will address your question to Mr. Lapointe, I am sure you will get an answer which will be enlightening.

Hon. Mr. LAPOINTE: I agree with the Chairman that on general principles it is better that the Federal law should apply equally to all provinces. But in this case I would rather think there might be room for another view, because Quebec's law is not the same, it has the civil law, there are many differences, and those differences make for a special case as far as the Bankruptcy Act is concerned.

The CHAIRMAN: Conditions have altered a great deal in the last two or three years, but when the last amendments were put through there was some

suggestion at least to you that the farmers of Quebec should be exempted, and you thought at that time—

Hon. Mr. LAPOINTE: That we should investigate further.

The CHAIRMAN: And if possible maintain the integrity of the legislation.

Hon. Mr. LAPOINTE: There was no extensive amendment or revision of the act while I was Minister of Justice, only a few amendments two or three years ago, suggested by various parties. But the Act was amended, I think in 1923 prior to my being Minister of Justice.

Mr. SPEAKMAN: One thing I would like to say; when the chairman said that some of us hesitated about expressing a definite opinion, I have no hesitation about expressing the definite opinion, as far as the farmers in my province are concerned. My communication with Mr. Brownless was not so much because I hesitate to form a definite conclusion before hearing from him, but I wish to receive from him opinions and suggestions which might substantiate my stand. But my stand is very definite.

The CHAIRMAN: Have you anything else to say—
Thank you very much for coming, Mr. Godbout.

Col. SYDNEY BAND, Vice-President of the Fidelity Casualty Co. of Canada, called.

The WITNESS: Mr. Chairman and gentlemen, I was asked by the Guarantee Branch of the Canadian Casualty Underwriters' Association to put forward to you certain views in regard to section 18 of the Bill. I understand that it is the intention to have one qualifying bond, which will be the only security which will be asked of any licensed trustee. I wish to submit that in our opinion no matter what amounts you fix that bond at, it will be inadequate security which will be asked of any licenced trustee. I wish to submit that in idea, some of the more prominent trustees have had to go from one guarantee company to another, they have filled up one company at $200,000 of liability, they had to go to another company and have them bond them on the various estates. I would not doubt at all that if any of these licensed trustees became dishonest, you would find that the security was entirely inadequate, no matter what the amount of bond you fixed.

We think that the suggestion in the Act that there should be a qualifying bond is correct, but that qualifying bond should be a nominal amount, so as not to be class legislation, so that a competent auditor could be a trustee and pass the qualification necessary to satisfy the Superintendent of Bankruptcy. In that way you have a qualifying bond, where the investigation would be made by the Superintendent; then we think and respectfully suggest that you should adhere to the present custom of requiring security to be fixed by the Registrar of the Court to whom the estate goes to appoint a trustee, or give him that estate, and that he should still fix the amount of security required in that estate. In that way you would have ample security at all times to take care of any liability which might arise on any one estate.

Just to give you an idea of what I mean; if you simply have a qualifying bond of say $50,000, we had a case in Toronto last year, George A. Stephenson, our Company paid out $25,000 on estates that he went wrong, every estate involved.

The CHAIRMAN: The loss was over $100,000?

The WITNESS: Well over $100,000 I think.

The CHAIRMAN: $148,000.

The WITNESS: I do not want to quote figures, because I have not got them accurately, but I think in the neighbourhood of $200,000. By adopting the qualifying bond you get the principle of keeping out the trustee who is not

entitled to handle an estate. But if you add to that the requirement that security shall be given by a guarantee company on each and every estate which he is administering, I think that would be much wiser than simply to have one qualifying bond.

Not only that, there are lots of competent auditors, as you may call them, who would be making application for licence, and if they applied to a guarantee company for a bond of $50,000 the guarantee company must necessarily look into their financial standing as well as their moral character, and a lot of these trustees would be ruled out by the guarantee companies because they would not want to assume a bond for so large an amount in such a case.

Another feature is, this bond I believe is annual, and will go on perpetually as long as the licensed trustee conducts his business properly. I submit that you are going to get a tremendous accumulation of liability, because as some of you probably know it is impossible for a trustee always to close up an estate within a given time. We have a case in Toronto of a trustee who is perfectly responsible, but we got to our liability limit three years ago. We have still about $200,000 of liability on our books and when we ask for an explanation he says, "Well there are certain aspects of this estate which if I liquidated them it would not be to the benefit of the creditors." So you see a licensed trustee giving a qualifying bond for whatever amount you may name could not possibly be amply secured in case he went wrong, because every estate would be involved as a general rule. What an embarrassing position for the Government to be placed in if, relying on the Act, you put a nominal amount, say $50,000 as a qualifying bond and it turned out that a certain trustee who went wrong was in default for $700,000 or $800,000. Would there not be a terrible situation?

By Mr. Speakman:

Q. Would you suggest also that there might be another difficulty, that it might exclude many qualified men who would be perfectly competent to deal with small estates but who would be unable to secure a qualifying bond of sufficient amount to cover general practice?—A. That is the point I am making.

Q. And would confine the entire practise to men of large means?—A. Exactly. It is what I may term class legislation.

Mr. GRUNDY: May I make an explanation? The point has already been discussed by Mr. Varcoe, and at his request I drafted an amendment to the section to provide for a separate bond in each estate as recommended in your evidence. We saw the difficulty that would arise. So I think that is having the attention of the Department.

Mr. SPEAKMAN: It sounds very logical to me.

The CHAIRMAN: It might be well that the suggesed amendment be read into the record at this point.

Mr. GRUNDY: I do not know whether Mr. Varcoe has yet approved, I gave it to him yesterday.

The CHAIRMAN: The suggested amendment, which Mr. Grundy has handed to me, is in the following terms:

> Section 37 of the said Act is amended by adding thereto the following substitution:
>
> Every Trustee appointed by the Creditors shall, in addition to the security required by the Section 36-A of this Act, within seven days give security in cash or by bond of an approved Guarantee Company, satisfactory to the Official Receiver, for the due accounting and for the payment over and transfer of all monies and property received by him as said Trustee. Such security shall be deposited with the Official Receiver and

shall be given in favour of the Creditors generally and may be enforced by one of them on behalf of all by direction of the Court. The amount of the said security may be reduced at any time or from time to time during the administration of the Estate by resolution of the Inspectors.

Q. Why reduce? Why not "increase or reduce"?

Mr. GRUNDY: It might be either increase or reduce, but as dividends are paid the necessity for so much security disappears. For instance two months after assignment a dividend on practically all the assets may be disbursed and there is no necessity for so much security. Is not that the case?

The WITNESS: Yes, I was just wondering whether this suggested amendment took into account the fact that the first person appointed is the Custodian. He gives a nominal bond. Then, if he is approved by the Creditors he is appointed trustee.

The CHAIRMAN: One of the possibilities of the amendments before the Committte is that the custodian may disappear. I can only say it is a possibility. But I think the purpose of the amendment is that it should fit into the amendments as finally drafted.

Mr. ELLIOTT: That means that in every case it must be cash or the bond of a guarantee company? That is, no man can have as security the bond of an individual, friends, or anything of that kind?

The CHAIRMAN: No.

Mr. ELLIOTT: He must in every case get the bond of a guaarntee company. In how many cases in your experience has anybody put up the cash?

The CHAIRMAN: Never.

Mr. ELLIOTT: In how many cases would you expect cash to be put up?

The CHAIRMAN: Judging the future by the past I think the answer is—

Hon. Mr. LAPOINTE: In the negative!

Mr. ELLIOTT: That simply means that the only remedy is the bond of a guarantee company in all cases?

The CHAIRMAN: Yes sir.

Mr. ELLIOTT: It strikes me off-hand that that is rather hard on the custodian of a small estate, because after all it comes out of the estate, it comes out of the people who are claimants againts the estate, whatever amount is paid for the cost of getting protection from a dishonest or incompetent trustee.

The WITNESS: May I say that the charge is very nominal, it runs about $4 a thousand, so you would have to have an estate of $10,000 to have a charge of $40. I do not think that is a very serious matter.

The CHAIRMAN: You see they exact a substantial collateral, so I assume that the hazard is in consequence limited.

Mr. ELLIOTT: We have exactly the same thing in Ontario in the administration of the estates of people who die intestate, and the liability is very similar. It seems to me that it would be a great hardship if in each of those cases we were to adopt a similar rule and say that you must have a guarantee bond.

The CHAIRMAN: I think if you turn to the Act you will find that the difference between this amendment and the law as it now stands it not substantial.

Mr. GRUNDY: It is just the same sir.

The CHAIRMAN: Except that we are suggesting that trustees be licensed. And a man may only qualify as trustee of an estate if he is a licensed trustee. And one of the conditions of his licence is that he give a bond. But if he is to be called upon to give a bond for each estate that he administers, I suggest that the official bond be largely reduced. So in substance the amendment places no added burden on any estate.

Mr. ELLIOTT: Well, either the amendment makes a substantial change, or it does not. If it makes no change what is the object of the amendment?

The CHAIRMAN: This is the position; under the law as it stands now a trustee must give a bond. Under the drafted amendment there will be appointed a superintendent of Bankruptcy. One of his functions will be to pass upon applications from trustees who wish to secure a licence. The obtaining of a licence is made conditional upon putting up a bond. It was suggested in the amendment that instead of giving a bond for each estate the bond which he gave when he got his licence should avail as security to the creditors of all estates which he might administer.

The amendment of Mr. Grundy would do away with the amendment that we have been considering, and would revert to the old system in effect under the present law with the exception that the licensed trustee would have to give I think one may say a nominal bond as a condition of the issue of his licence.

Mr. SPEAKMAN: I suppose that would be in order to exclude any fly-by-nights, and restrict it at least to decent, substantial people who had no relation to any particular estate.

Mr. MACDONALD: But should it be restricted to a nominal amount at first? Should it not be a substantial amount?

The CHAIRMAN: I had no right to use that terminology, Mr. MacDonald, but I think it fair to assume that if the licensed trustee is to be called upon to give a bond to secure the creditors of each estate, the initial bond will be for a less amount than it would be otherwise.

The WITNESS: I would like to add that unless you are going to legislate against a man of certain means, that is a man who may be able to qualify to a guarantee company for a ten thousand dollar qualifying bond, if you jump that bond up to a much larger amount you are going to eliminate a lot of competent trustees who are quite able to get a smaller qualifying bond, but who the guarantee companies in their wisdom might decline for the larger amount.

GEORGE S. HOUGHAM, Secretary, Ontario Division, Retail Merchants Association of Canada.

Mr. HOUGHAM: Mr. F. H. Boseley is also associated with me.

The CHAIRMAN: Mr. Messier, of Quebec, and Mr. MacQuarrie, of Saskatoon, have already been here. Will you tell the Committee whether the body you represent approves of the creation of a Department of Bankruptcy under the Minister of Finance, and of the appointment of a superintendent?—A. Mr. Chairman, I would like to answer the question partly in the affirmative and partly in the negative. I think we would approve of the principle, but I would respectfully suggest—I do not know how radical this may sound—that the Department should be under the Department of Trade and Commerce rather than the Department of Finance.

By the Chairman:

Q. Why?—A. Because in our opinion bankruptcies and all that is associated with them, both preventive, and subsequent liquidation proceedings, are commercial rather than national finance matters.

Q. Is not that also true of insurance and trust companies and other undertakings which are subject to the Department of Finance already?—A. I can see that view-point very well, but I hardly see why the Department of Trade and Commerce would not be just as logical to take care of a situation of that kind. I may be wrong, but that would be the view-point of a lay-man.

Q. But if it were convenient to put the administration of the Bankruptcy Act into the hands let us say of the Superintendent of Insurance who may be

relieved of some of his duties as a result of litigation, there is no essential objection to that, is there?—A. No objection to it. The principle is sound, I believe.

If you would permit me to read this memorandum. It is drafted for economy of the Committee's time. I think there are one or two new items in this which might be worth your attention.

MEMORANDUM

THE CHAIRMAN AND MEMBERS OF THE SPECIAL COMMITTEE CONSIDERING AMENDMENTS TO THE BANKRUPTCY ACT:

GENTLEMEN: The deputation presenting this Memorandum represents the Ontario Division of the Retail Merchands' Association of Canada, an organization which the Committee members will probably be aware is Dominion-wide in character, deriving its charter from the Dominion Parliament and speaking with authority for the many thousands of retail establishments from coast to coast.

The most superficial student of modern retail distribution will be aware that retail merchandising has emerged within the past ten years from a mere occupation or means of livelihood to the status of a scientific profession. Unfortunately, there are many hundreds of retailers who have yet failed to grasp that fact, while it is also true that there are a proportionate number of manufacturers and wholesalers who have so far failed to recognize the trends of merchandising, with the result that much unwise credit has been extended to incompetent people to the detriment of the people themselves and to the economic loss of society as a whole.

In presenting the following material for the earnest consideration of this Committee, reference has been made to the foregoing because, in the humble opinion of your deputation, the Bankruptcy Act as it now stands places too much emphasis upon liquidation, and not enough, if any, upon restoration. The Ontario Division of the Retail Merchants' Association, while recognizing the necessity for proper machinery to take care of necessary liquidation, is convinced that a very large proportion of the cases which now go through the Bankruptcy Court might be prevented if there were proper machinery provided by the Act under which expert guidance, advice and possibly supervision, could be exercised in such a manner as to prevent bankruptcy with its attendant evils.

To those not actively engaged in retail distribution, the term "attendant evils" may not be altogether clear. May we be permitted to enumerate them: In the first place there is the obvious financial loss, but far more important is the broken morale of the individual who goes through that process. We are not referring here, of course, to the habitual bankrupt, but to the unfortunate victim—either of his own mismanagement, lack of judgment, or possibly high pressure salesmanship on the part of those too anxious to find retail outlets, regardless of their nature.

The second evil is a direct result of the first and concerns all the other retail merchants doing business in the vicinity of the bankrupt. These merchants, who have bought their merchandise in good faith with the intention of paying one hundred cents on the dollar, find themselves subjected to the unfair competition of merchandise sold under distress conditions at less than they paid for the same merchandise in their own stores. Not only so, but it is an unfortunate fact that which every business man is painfully familiar, that apparently bankrupt stocks are inexhaustible. It would be amusing, if it were not so tragic, to observe how long a ten-

day sale can last. Toronto clothiers have had a vivid demonstration of this phase of bankruptcy throughout the Fall and Winter months from which we are now emerging. It is no exaggeration to say that the legitimate consumer-demand for men's clothing during that period has been ruined by two or three bankruptcies, some of which are now proceeding.

The third evil for which the present Bankruptcy Act is merely a palliative is the forced loss sustained by creditors under a system of liquidation which stimulates the sale of assets at whatever price they may bring, because once an estate is in bankruptcy it is to the financial interest of the trustee to liquidate regardless of intrinsic value. The present act and proposed amendments, as we understand them, place the emphasis upon the liquidation of the business of a merchant. The Custodian is compensated upon the basis of the sale of the assets and it is consequently to his interest to get these assets sold rather than to work toward keeping the merchant in business.

We respectfully submit that the costs of bankruptcy under existing legislation are far too high. In this statement we seem to be supported by a great many responsible and representative organizations who have communicated similar views to us and, we believe, to this Committee. It is only upon rare occasions that bankruptcy proceedings realize one hundred cents on the dollar for the reason that trustees' expenses and fees are high and it is frequently the policy of both creditors and trustees to wind up the assets so quickly that but a very small proportion of them are adequately realized upon.

Our experience over many years and dealing with hundreds of retail merchants of all types justifies the conclusion that a great many bankruptcies are as much the fault of creditors as they are of debtors, and while we recognize that it is not within the province of this Committee or of the Act with which you are immediately concerned, we cannot neglect the opportunity to reiterate a conviction that has been submitted by this Association to successive Governments for many years, suggesting the desirability of the establishment of a division of the Department of Trade and Commerce which would act as an authentic bureau of information in retail merchandising technique and thus become a powerful hankruptcy-preventive agency, similar to that operating through the Domestic Distribution Division of the Department of Commerce at Washington.

It is a regrettable fact that students of merchandising methods in Canada are compelled to go to either Washington or any one of the more outstanding American universities to obtain worth while guidance in the business of retail distribution. As to how worth while that guidance may be is contained in an illuminating statement made by Dr. Julius Klein less than a week ago, in which he told the story of how in a given group who had consulted the Department and availed themselves of its merchandising services, bankruptcies had been reduced by 75 per cent in 1931, which was certainly a testing time for all businesses.

If the Committee will pardon this slight digression which is not so much a digression from the main theme after all, we would now respectfully submit some definite recommendations which may be briefly enumerated as follows:

1. One fundamental weakness, as we see it from the viewpoint of the honest debtor, is that where a petition in bankruptcy has been filed against him, all control of his business passes entirely from him, the assumption being that he is unfit to continue to manage it. This may or may not be true. The experience of this Association is that under proper supervision many businesses seemingly bankrupt, are capable of satisfactory adjustment, and we would therefore suggest that a debtor be given the option

of appointing an Interim Receiver of his choice, such Receiver, of course, being properly qualified and particularly qualified in the technique of merchandising, which is an altogether different thing from the technique of bankruptcy.

May we suggest further that such interim receiver as herein described, be clothed with the necessary powers to conduct this business for an experimental period of, let us say, nine months, and that the debtor during such time, would be regarded as being on probation, receiving a specified salary for his management function.

2. If, during this probationary period, it should be found that sufficient progress has been made to satisfy the Courts that there is reasonable expectation that the business will pay one hundred cents on the dollar, a further extension be granted.

It may be argued that the present machinery of the Act and the actual commercial practice provide for extension periods such as are referred to in the foregoing. The point we would wish to make in this connection is that such extension proceedings have nothing in mind but the trustee's desire to liquidate the assets. No provision is made for the conservation of the business or for the education of the retailer in scientific principles of modern merchandising. For this reason we submit that the debtor, whom we have been careful to qualify by the word "honest," should be permitted to carry on, not as he has carried on before but under expert direction, responsible to his creditors and with the ultimate hope of re-establishing himself.

With this purpose in mind we would recommend that monthly financial statements be submitted by the interim receiver covering the extension period to all creditors, and if the financial position shall become worse and, in the judgment of the Court, the situation does not warrant the continuing of the business, then final bankruptcy proceedings may be instituted. We are interested in prevention, restoration—both of financial and moral assets.

Still having this general purpose in mind, may we further recommend that the fees of the Custodian be based upon the amount of the dividends that he disburses and not upon the assets that he sells, and that a special bonus be given to the custodian in such case that a debtor be discharged from bankruptcy after paying his creditors in full.

In the case of the Iterim Receiver we respectfully suggest that his compensation be based upon a percentage of the turnover in the business during the time that it is under his direction.

It will be seen from these recommendations thus far that what we are trying to do is to place a premium upon efficient management and an incentive to all parties concerned to save the business from liquidation proceedings.

Because of actual experience in bankrupty prevention in a great many cases within recent months in which creditors have not even thought it worth while to institute bankruptcy proceedings, we would earnestly recommend to this Committee that the Act be so framed as to provide that interim receivers, if appointed as we suggest, should be an organization or individuals possessing special qualifications, not merely in the technicalities of bankruptcy proceedings but in the far more constructive activities of correct accounting principles, modern merchandizing technique, and whose experience would be available not merely to the

debtor and to creditors, but to society as represented by the Government, in the prevention of business mortality which is, in a great many instances, a preventable economic loss.

All of which is respectfully submitted.

(Signed) GEO. S. HOUGHAM,
Executive Secretary.

Ontario Provincial Board Retail Merchants' Association of Canada.
APRIL, 21, 1932.

By Mr. Kennedy:

Q. Is it your experience that in Ontario trustees do not, or are not disposed to attempt to work out the re-organization of a business when it comes into their hands?—A. I would not say it is so much a question of lack of disposition. I would say it is a lack of ability. I do not mean accounting ability or bankruptcy-procedure ability. If I might be permitted to give an illustration—

Q. You mean they have not the proper training?—A. Precisely.

Q. Apart from that is it your exerience that as a matter of fact they rarely do attempt to re-organize?—A. I would not say rarely, but there are a lamentable number of cases in which bankruptcy proceedings are forced through at a rate which is not good for anyone. I have in mind a furniture store, in which merchandise was sold under high pressure methods in a small town in Ontario within the past year, and in thirty days after that bill of merchandise was delivered bankruptcy proceedings began. That may be an extreme illustration, but I think it is a fair one.

Q. What particular class of people do you suggest would be competent to act as interim receivers?—A. There are an increasing number of expert merchandising people who are going in and out of stores to-day modernizing them, bringing them up to the requirements of modern merchandising and enabling them to meet competitive conditions of to-day. I would hesitate to name any particular one, modesty would prevent me naming our own organization, although we are actually doing that type of work, and in the past four or five months have actually salvaged 30 or 35 businesses and are paying dividends to creditors. We do it not by the application of magic or mystery, but by the application of well known principles of merchandising.

Q. Is it your experience that in many large areas, I have in mind the West, that the buying public fail to respond to these modern merchandising methods?—A. No I would not think so. I lived in Alberta four years and British Columbia about fifteen, I think they are just as susceptible to these things as the people of Ontario.

Q. I have in mind a very large organization that adopted what they considered modern methods of merchandising and insisted on their managers throughout the prairies adopting them, and educating the farmer to buying the way they laid down and the quantities they laid down, but it did not work out? —A. Might I be permitted to ask whether that was a chain organization or individually owned stores?

Q. Not a chain organization, it was a large hardware concern that was the result of amalgamation?—A. I think perhaps I am familiar with it.

Q. At least that is what I understand, and I was in very close touch with their operations. Your proposition just brought that to my mind.

By the Chairman:

Q. Mr. Hougham, I would like to read to you for your comment a paragraph from a letter which was received by the Committee the other day. The writer is a manufacturer, and his knowledge of the law of the Province of Ontario may be incomplete, but this is what he says:

> The biggest abuse we have an example of to-day. Our traveller got an order from A. W. Moyer, Ltd., of Toronto. We were a little slow in making delivery, they wired frantically for the goods and we managed to ship them last Saturday morning. They got to Toronto on Monday and were delivered. Their last telegram was sent us from Toronto on April 8. On either Monday or Tuesday, from what we can learn, they made an assignment, our goods were there before that. There is no thirty-day clause in Toronto. We have not yet had time to find out, but will wager anything that there is not any of our goods in the building, because we have had the same thing happen over and over again. They invariably take them, draw them somewhere, then for half-price sell them and put the money in their pocket. The law says the goods are theirs and there is nothing we can do.

That is the statement of an aggrieved manufacturer, and it seems to me that, as representing the retail trade of which he is complaining, you might throw some light on the situation.—A. The statement opens, as I recall, with the expression "the greatest abuse." If you would just strike out those three words from the text—I would not be prepared to concede that a practise of that kind is so general as to constitute a great abuse. I do know that such practises and others of an undesirable character are prevalent in merchandising, but I would not think it is fair to say that it is so general as to constitute a very grave abuse. There may be manufacturers whose wider experience would make them disagree with me, but I do not think that is very general.

By the Chairman:

Q. Well, I have read you the statement of this manufacturer to get an appreciation from you of the suggested amendment to the Act which would make it very easy to put the dishonest debtor in gaol. I speak of the amendment to section 202.—A. I would simply say on general principles that there is no question but what this Association would support without any reservation any amendment to the Act which would further penalize the dishonest debtor. We have no reservation in our minds about it at all, these dishonest debtors are just as much a menace to the honest retailer as to the honest manufacturer.

Mr. MacDonald: What about your suggested liberty to the bankrupt to appoint an interim receiver to carry on?

The Chairman: Mr. MacDonald, I would like to read one more paragraph, which gives more point possibly to your question. It is:—

> Another thing we understand is that according to the Quebec Bankruptcy Law, if a man makes an assignment he has the right to the keys of the place of business for three more days. In other words, if he has not had time to steal all of the assets, the law gives him the necessary opportunity.

Mr. Spence: I think, Mr. Chairman, in all cases I have known where a man buys goods and sells them at less than cost price, it is a criminal offence.

The Chairman: But the witness has inferentially suggested that bankruptcy as we understand it, as a means of realizing upon the assets of the debtor for the benefit of the creditors under the direction and control of the creditors be suspended, and that a degree of benevolence which has not yet manifested itself in bankruptcy legislation be incorporated for the benefit directly of the debtor and incidentally of the creditors. I would like his opinion as to the desirability of allowing the debtor to administer the property which, up to now has been considered the exclusive security of the creditors, when he has been financially wrong.

The WITNESS: Mr. Chairman, your question is a theoretical one, and I would like to answer it by a practical illustration. Within the past 60 days we have had several cases, one of which stands out particularly in my memory, in which we have been able to salvage a business. I think perhaps you have read rather a broad meaning into my inference, particularly when you use the word benevolence. I am not thinking particularly of some benevolent act for the distressed debtor. I think if my memorandum is read you will understand that what I have in mind is a Committee of Supervision, a committee on which the debtor and the creditors are represented.

It so happens that in this particular case they have appointed Mr. Boseley, who is associated with me, as the director of that business under their supervision. Nothing can be done by that debtor now any more than could be done were he operating under ordinary bankruptcy proceedings. His buying must be directed by that committee. The committee, however, are animated by a desire, not to liquidate the business and wind it up, but to make it possible for him to carry on, pay his creditors, and become a successful merchant. Is not there a distinction between what you have in mind and what I am thinking about?

The CHAIRMAN: That is the law now. I think all creditors are animated by a desire to sustain life in any merchant who is in the least degree viable.

The WITNESS: That may be the desire of the creditors but it is not always a desire of the trustee.

The CHAIRMAN: But the creditors are supreme.

The WITNESS: Theoretically yes. In actual practice our experience is that the trustee is affected by other desires.

By the Chairman:

Q. To what extent will the appointment of a superintendent of bankruptcy and the licensing of trustees eliminate from practice the undesirable trustee? Because I assume you consider the trustee who would perform acts of depredation such as you have described an undesirable trustee?—A. Mr. Spence summed up my view in a single word. He used the word "qualified." That is our principal criticism, and it is a friendly and constructive criticism, it is not intended with any sinister application, our thought is that trustees in bankruptcy are experts in bankruptcy, they are not experts in merchandising.

By Mr. Spence:

Q. How would it be if some experts in merchandising got into the trustee business?—A. I think that is a desirable thing, that is exactly what we are trying to present here.

Q. Supposing in a given estate the debtor demonstrates to his creditors that under certain conditions he can see light and there is a probability of him re-establishing himself. Assuming that the creditors, as is the case with the general run, are desirous of giving him an extension to re-establish himself. With the existing machinery can they not do so? And if the trustee who is handling the estate is not competent to do that work they could call in one of your merchandising experts and use him for a fee?—A. It has not been the practice so to do.

Q. What is the objection? Your desire then is to set up then a sort of separate class?—A. Supplementary to the existing machinery, yes sir.

By Mr. Turnbull:

Q. Is it not a fact that there are hundreds of extensions taking place in the operations of creditors and trustees now, without the necessity of either receivership or assignment?—A. There are such cases.

Q. And those retailers that they think worthy of being saved are being salvaged in that way.—A. There are such, but there are not enough of them.

Mr. SPENCE: Those are not rare in my experience.

The WITNESS: Well there is room for a tremendous increase in them, I submit.

The CHAIRMAN: Mr. MacDonald, has your question been answered or lost?

Mr. MACDONALD: My question had something to do with another point. I want to get back to the first observations of this gentleman regarding the necessity of having machinery to prevent bankruptcy and to carry on business if at all possible. The difficulty as I see it would be that of having the Government or the Superintendent of Bankruptcy interfere such time as the man had declared his bankruptcy.

The WITNESS: I appreciate your point. That subject is so comprehensive, and perhaps outside the province of this Committee, that I hesitate even to commence the answer. May I content myself with this observation—and I hope content you—that that type of work is being increasingly undertaken by our friends to the south of us with very startling results. Whether that would come under the direction of a Department of Bankruptcy is a debatable question, but Hon. Mr. Lapointe, who has heard me present this viewpoint to previous governments, is aware of the fact that we are constantly reiterating that if the Government were as conscious of the necessity for giving expert aid and advice to retail distributors as it has already recognized it should do to other branches of our economic life, there would be a tremendous saving to society as a whole. That may not be within the province of the Superintendent of Bankruptcy.

Mr. MACDONALD: After all, isn't it really a matter for the creditors themselves? Are you not asking the Government to undertake something that should be done by the creditors themselves. They have gone and extended credit to this merchant, now they ask the Government to step in and prevent the loss that arises from their own acts.

The WITNESS: I think perhaps I have failed to make myself understood. My thought in talking about this preventive department is not that it has any relation to bankruptcy, but a department of commercial education, which would prevent the thing getting to the place where there would be any creditors who are petitioning in bankruptcy. I recognize that that is a wider field than the field this Committee has power to inquire into.

By Mr. Elliott:

Q. Your reference is more to preventing the debtor getting into financial difficulty?—A. Precisely.

Q. Than to compromising with the creditors after he has got into financial difficulties?—A. I think my observation is double barrelled. I am concerned about the phase you have mentioned and I am as well concerned about the desirability of calling in expert help where compromise is necessary.

Q. In your experience has the percentage of compromise been increasing or decreasing in recent years?—A. I do not believe I would care to answer that categorically. If I do it is quite tentatively, I would be disposed to say that the number of compromises are increasing.

Q. Of course that rests largely with the creditors?—A. Yes. I observe that tendency, I admit that tendency.

By Mr. Fraser:

Q. In your opinion what percentage of bankruptcies are due to incompetence, have you any figures to indicate that?—A. I have not any statistics that I

have been able to collect personally, but there are available such statistics. When you start quoting statistics you have to be very careful, because they may be misused. Mr. Boseley, there are some actual figures we have on file published within the last 90 days, do you recall them?

Mr. BOSELEY: I do not recall them.

The WITNESS: I am thinking particularly, Mr. Chairman and gentlemen, of a very interesting thing that was revealed by what is known as the Louisville survey, which was a Government enquiry into certain merchandising conditions at Louisville, Ky., and has become a standard classic in the technic of merchandising. The figures revealed in that survey are startling and amazing, I use the adjectives with discretion.

By the Chairman:

Q. If you have a copy of that will you file it with the clerk?—A. I will be glad to do so.

The CHAIRMAN: Any other questions?

Mr. MACDONALD: He did not answer the question I asked about the appointment of an interim receiver by the bankrupt. Would not that give the dishonest bankrupt the very opportunity—

The WITNESS: I think I have been too specific in that statement, I think I should have qualified it by saying the bankrupt with the consent of the creditors. In other words that he should be given some power to nominate some person qualified to do that job. Appointment by the bankrupt with the consent of the creditors.

By Mr. Kennedy:

Q. That would be tantamount to an appointment by the creditors.—A. Well usually they select the assignee, don't they, without any reference to his ideas on the subject?

Hon. Mr. LAPOINTE: Only to offer some suggestions.

The WITNESS: He is not supposed to have any power to make suggestions. He is apparently considered to be incompetent from that time on.

By Mr. Spence:

Q. He is disqualified.—A. The debtor, that is the assumption.

Q. You have made several statements about the trustee, is it not a fact that the trustee is usually guided by the inspectors appointed by the creditors?—A. Now I have actually been a trustee, and I have actually worked under inspectors, and my experience of inspectors is that their functions are rather nominal than actual.

Q. That should not be. The man is engaged in the business, who has made the failure. You are simply building up a class for the purpose of living on the creditors, as far as I can see. You are building up another class of people to live on the creditors.—A. I think I do not get that point.

Q. Well I get it.—A. I am sorry, I just don't.

Q. Some body or class who get between the creditors and the debtor and get most of the money that the creditor should have got.—A. No, sir, I have no such idea in my mind.

Mr. SPENCE: I have not lived so long without finding it out.

The CHAIRMAN: If your appraisal of the value and influence of the creditors be exact, you do not assess their value and influence highly. Does it not mean then that if the debtor is to be given the position which you advocate for him with the consent and advice of the creditors, you are really putting the estate back into the hands of the debtor who cannot meet his obligations?

The WITNESS: No, sir, I think my memorandum is very explicit on that. I think you will find that careful reading would reveal that fact, because if during the experimental period of adjustment it is discovered that it is not possible to restore that business, then the creditors would still be protected to the value of the liquidation that might be possible.

By Mr. Macdonald:

Q. Have you any suggestion about reducing the costs of these bankruptcies? —A. None other than of a general character. I have no specific recommendation to make.

Q. Is there any way of co-ordinating or making a general law? In one province a trustee gets a certain amount, and they tell me that in another province he gets remuneration on a different scale altogether.—A. Then the Act should specifically provide.

Q. No, the Act is the same in both provinces, but they administer it differently. The Registrar will give one man a big bill of costs and one another.—A. In that case it seems to me—and I am just speaking on impulse—that the business of the new official would be to take care of situations of that kind and establish a standard practice.

Q. To oversee every bill of costs before it is paid?—A. Exactly.

HAROLD J. INNS, General Manager, Better Business Bureau of Montreal, called.

By the Chairman:

Q. Mr. Inns, will you tell the Committee if you approve of the suggestion contained in the Bill before the Committee to create a Department of Bankruptcy presided over by a Superintendent of Bankruptcy within the Department of the Minister of Finance?—A. Most decidedly. I have read very carefully the Bill in its original form, which I understand has passed its second reading. The most important part of that Bill, I think, is the appointment of a superintendent. The reason I think that is the most important is that the essential feature of our present Bankruptcy Act is creditor control. Now, creditor control in bankruptcy broke down in England 50 years ago. It has broken down in the United States. Yet we have tried to operate under it for the last 10 years. It has been tried and found wanting. Creditors are not competent to supervise entirely a bankrupt estate. They certainly are qualified to sell the stock and to advise a trustee through their inspectors in many respects, but the onerous task of detecting fraud—and after all fraud in bankruptcy is the big factor to-day—cannot be left to the creditors, it is too costly, and they simply cannot do it. Therefore I see in the appointment of a superintendent an effort whereby creditors has a certain amount of control, but at the same time it is the thin edge of a wedge in order to get some proper supervision and enable the Government to accept that part of its responsibilities which it owes to business and finance.

Q. Possibly it would have been better had I asked you to explain to the Committee your opportunities for observation and becoming acquainted with conditions under the Bankruptcy Act.—A. Gentlemen, I am not a lawyer. But during the last ten years I have represented the creditors by proxy. I am General Manager of a non-profit organization which represents business and finance—

Mr. SPENCE: How do you live?

The WITNESS: That is a good one. It is not operated for profit, it is an organization of business men. As proxy for creditors we have been interested in the administration of thousands of bankruptcies, anything from shipyards to grocery stores, representing the largest creditors in Montreal and Eastern

Canada, such as the railways, public utility companies, such as the Bell Telephone Co., and manufacturers and merchants to the smallest jobber and agent. In this work I and my assistants have sat as inspector in over two thousand bankruptcies in the last ten years. It is from my personal knowledge I make the statements I do to-day. I believe the Bill even in its present form, if passed, will not solve the problem, but will be a big step in the right direction, because it aims at something a little better than absolute creditor control. Everything of course will depend on the administration. No law, no matter how good, unless it is properly administered, is worth a tinker's curse.

By Mr. Turnbull:

Q. To what extent do you suggest the Government should undertake administration?—A. I believe the superintendent should be very careful in the appointment and licensing of trustees, that is the first step. Secondly, I think the Federal Government should appoint all the officers required to administer the Bankruptcy Act, such as the registrars and official receivers. You cannot have proper control over them unless you have authority centralized in our Capitol here.

Q. Should the Federal Department, having appointed the officers, limit itself to that, or should it go further?—A. It should go further.

Q. How far?—A. To this extent, that the superintendent should be allowed wide powers. Mind you, I agree that the Bill in its present form does not give complete power. But I think, for instance instead of one registrar there ought to be deputy registrars and there ought to be a public examination in every bankruptcy, and the superintendent at Ottawa should see that that is done.

Q. Conducted by the Federal Government?—A. Yes, by the registrars and official receivers. The official receiver not performing clerical functions, as to-day but to be the investigating officer to detect fraud. But that is beside the point now. I realize we cannot get it, I was told two months ago that no contentious legislation of that nature would be considered at this session. That is why I am most anxious that we get the Bill in its present form adopted at this session, as a step in the right direction.

By Mr. Elliott:

Q. Do you think the power of the creditors over the conduct of the estate should be restricted beyond what it is now?—A. Yes. I do not think any group of creditors when fraud has been committed should be allowed to compromise with the debtor. What happens to-day? A man goes into bankruptcy, no assets. He offers 25 cents on the dollar. He offers that because he knows that the creditors would rather have 25 cents than nothing. Therefore that is a kind of rolling stone. We have so many 25 cent settlements that it is called the Canadian National settlement. I do not think the superintendent should allow the creditors to compromise with fraud.

Mr. TURNBULL: I do not think the creditors should.—A. That is the point, because we have creditor control.

By Mr. Elliott:

Q. How would the 25 cents on the dollar compromise compare with what the creditors have got in assignments or bankruptcies that have taken place? Could you give the Committee any idea about the percentages that creditors have received on their claims in bankruptcies that have taken place in this country in the last ten years?—A. No, no figures at all.

Q. Would it go up to 25 per cent?—A. Oh no. It is usually the option of nothing or compromise at 25 cents, and the creditors are so discouraged by the small sentences handed out by the judges—which is no affair of ours at present

—that they take the 25 cents rather than nothing. As long as creditors are allowed to compromise with fraud we will have bankruptcies because bankruptcies are particularly profitable for dishonest debtors.

The CHAIRMAN: And dishonest creditors.—A. Yes I agree absolutely. We have to take the control to a certain extent out of the hands of the creditors.

By Mr. Spence:

Q. If you were a creditor would you not like to get 25 cents rather than nothing?—A. With the present administration surely, because if I did not take the 25 cents the man would go scot free, if I did not want to cover personally the costs of prosecution. The creditor is confronted with the alternative, Pay the money to prosecute, take 25 cents on the dollar, or let the matter drop.

Let me give an instance. A bankruptcy occurred in Toronto last week. Three racketeers bought out this firm last December, a firm with a record of good payment. They showed a fine financial statement, a lot of money in the bank, tremendous surplus, and they went out and bought goods from every mill in Canada nearly. A week ago last Monday they skipped. There is not a nickel left. My investigators 'phoned me from Toronto yesterday showing me how the goods had been disposed of—

The CHAIRMAN: Is that Moyer?—A. Moyer and Company. They have gone. The creditors are in this fix; there are no assets, no trustee will be appointed. The thing just drops.

By Mr. Turnbull:

Q. Do you suggest that a change in the Bankruptcy Act will stop that?—A. I do think the Government has some responsibility to business and finance.

Q. Which Government has the responsibility of prosecuting men like that?—A. I believe the official receiver should take that in hand. Not now, I am not advocating that now, I know we cannot get it this session, but the point I shall aim at is the public examination of every debtor and officer of a debtor company, following the English system, which has been found practical.

Q. In this case it is a matter entirely for the Provincial Government to prosecute these people, and all the creditors have to do is to lay in information before the Attorney General and these people will be extradited.—A. In theory yes. But the first step is that with proper supervision by the official receiver, making his investigation, and then have the registrar send the dossier to the public prosecutor.

By Mr. Elliott:

Q. But what estate is there to administer? The estate has gone.—A. Let the Official Receiver make his investigation.

By Mr. Turnbull:

Q. The bankrupt has gone without making an assignment?—A. No, his chief lieutenant, his salesman, made a stop at Montreal on the way down and filed a friendly petition in bankruptcy. I think we will never have proper administration of bankrupt estates until we have public examination before the Registrar in every case.

By the Chairman:

Q. But conceding that point for the purpose of argument, that would not remedy the case of which you have just told us, would it?—A. Oh yes. Not immediately, because these fellows, and we have many of them, a very large proportion of bankruptcies are dishonest, and they are dishonest because they

can get away with it. The mere fact that bankruptcy was made a disgrace instead of a business would result in less bankruptcies. The reason we have so many bankruptcies is because they are profitable, a means of converting liability into capital.

By Mr. Turnbull:

Q. Do you not think that if creditors did their duty and prosecuted it would make that sort of thing unprofitable? Are you not trying to substitute legislation for public conscience?—A. No I am not. I have been prosecuting debtors for the past ten years. We practically play a lone hand in prosecuting them in Canada. We have been prosecuting, and successfully prosecuting them with creditors' money. But for every one we prosecute there must be 50 go free, for the simple reason that funds are not available. Credit to-day is extended on financial statements. Years ago we used to know Jim Jones, to-day everything is done, due to our vast internal distances, on financial statements, and I believe we should make it a criminal offience and punish a man for manipulating a 50-thousand-dollar credit from behind a nice desk, just as we do the pick-pocket who lifts your watch when you are walking home. To me both crimes are of the same type, except that the pick-pocket may have what we call more guts.

Q. It is your idea that the Federal Government should assume the cost of keeping in close touch with all these estates and prosecuting?—A. Eventually but not now. I believe the legislation before us is a step in that direction, to get at the English system of the official receiver functioning as examining officer and examining every debtor publicly in open court.

By Mr. Elliott:

Q. Do you mean the cost of the estate in each case?—A. Oh yes, there should be a levy, absolutely.

Q. In the case of a small estate the greater the cost. I am impressed by what Mr. Spence said. It seems to me the suggestion that is important to this Committee is endeavouring to see how the people who are losing the money of these various estates can get a greater percentage of the estate than they are getting at the present time in a great many cases. If you are going to insist on an examination such as you suggest in each case, that means that that examination costs perhaps as much in a small estate as it does in a larger one, it would mean that out of the smaller estates there will be a smaller percentage paid in the future than has been paid in the past.—A. A percentage on the estates. Look at it this way: we are having an abnormal number of bankruptcies to-day. More than 50 per cent are dishonest no doubt in some degree. I am not afraid of losing one or one and a half per cent or one-half per cent capital tax on every bankruptcy, let us pay, because proper administration of estates will bring fewer bankruptcies, that is the point. Let us aim at fewer bankruptcies.

By Mr. Macdonald:

Q. You appear to attach considerable importance to the examination of the debtor. What would you say, if you are going to have a public examination, as to having it before a judge, either County Court or Supreme Court, instead of before a registrar?—A. Well I am going more or less on experience gained by survey of the bankruptcy law of England, where they have a registrar and deputy registrars and official receivers. They know the law, I mean it is a specialized job, there is enough of it to keep a full time man busy in almost every centre.

Q. But the registrars have not power to commit a man to gaol. If you put teeth into this law, and give the County Court Judge power to send a man to

gaol at once on a disclosure of fraud— —A. I do not know if that is practicable or not. What I suggest is that the official receiver be the fact finding man, the investigator, the examination be held in open court before the registrar. On finding fraud the official receiver would ask the registrar to send the dossier to the Attorney General of the Province or the public prosecutor, and then the onus of prosecution would be on the Attorney General.

The CHAIRMAN: Section 202 I think.

By Mr. Spence:

Q. To-day is it not possible to bring up a debtor for examination before the creditors?—A. At the cost of the creditors.

Q. That is done some times.—A. Oh we bring them up for examination every week, sir. But if there are no assets they go scot free. Therefore to-day, when a debtor is going to fail—I am speaking of Montreal particularly, which is the principal centre of failures of that type—it has been such common knowledge that if a man fails and he leaves $10,000 of assets the creditors are going to take part of that $10,000 to prosecute him, because it will only mean five or ten cents on the dollar. So the next fellow who fails says, I am not going to leave anything, because there is a chance of my being prosecuted if I do. It is so well known to debtors in Montreal to-day that they take everything, leave nothing, and then they have 80 per cent chance of there being no investigation, and very often no trustee appointed even.

By Mr. Elliott:

Q. You have likened the debtor who defrauds his creditors to the man who takes a gun and holds a man up and robs him. I am struck with the similarity between the two crimes. Why should not they be punished in the same way and by the same authority?—A. They should be. I am not suggesting that he be prosecuted by the Federal Government. I am suggesting that you ferret out the facts and turn them over to the proper prosecuting officer, by a public examination.

By Mr. Macdonald:

Q. Haven't you got a fairly wide examination through the questions to be put to the debtor by the official receiver?—A. That is before the trustee is appointed. That is just a matter of form. The examination should take place after the trustee is appointed and when they have got a better picture of the situation. That is what I am coming back to Ottawa for in the future. But now we are concerned with this Bill, which I think is a step that eventually will lead to the public examination of debtors. I find in the Bill in its present form much that is good, little or nothing that is dangerous and nothing that is really contentious. There are a few little things I would like to suggest afterwards in a memo, very unimportant, and I believe the Canadian Credit Men's Association has made some recommendation regarding an additional suggestion of the Bar Association which empowers the Judge of the Bankruptcy Court to convict a man. I think that is sound. I think the Canadian Credit men have also suggested that the registrar and official receivers be Federal appointees. Am I right? (No). But I have made one or two notes that I prefer to give you in writing, little suggestions here and there about this Bill, nothing particularly important.

By Hon. Mr. Elliott:

Q. Before you leave the point of prosecution for fraud, in Ontario for instance if a fire occurs under suspicious circumstances a fire marshal is sent to investigate, not at the expense of the insurance companies, he is a Provincial

Officer. What do you say as to some one acting in a similar capacity in a case of a man who defrauds his creditors? Going up and conducting an examination.—A. You mean a Provincial employee?

Q. A Provincial officer.—A. I wonder what status he would have to do that.

Mr. MacDonald: Appointed by the superintendent.

Hon. Mr. Elliott: He would have a similar status to the fire marshal.—A. Well he must have some status from Ottawa.

Mr. Turnbull: He has the status of a police officer making an investigation under the Act.

By Hon. Mr. Elliott:

Q. Yes, I fancy that is the standing. Why not have that officer perform the functions you think should be performed here, not at the expense of the creditors but at the expense of the Crown? Because this is a crime that has been committed.—A. But you have got to prove that there is a crime before the Crown will step in.

Q. You have with every crime. It seems to me the difficulty, take a case of a creditor who has already lost from 75 to 100 per cent of his investment, he is not the man out of whom the costs of prosecution should come.

The Chairman: You made some reference to the suggestion that you thought had been made by the Canadian Credit Men's Association. I find that the Shoe Manufacturer's Association, speaking through Mr. Weaver, made this suggestion:

> The hands of the superintendent will be tied unless the bankruptcy court officers be appointed by and become accountable to the Minister of Justice. If these bankruptcy court officers be made directly responsible to the Dominion Government, and if the Superintendent of Bankruptcy be given adequate power to investigate all conditions affecting bankruptcy administration, we believe that uniformity of practice and charges can be established in the several bankruptcy jurisdictions, and the objectionable conditions resulting from the present lack of effective control would be corrected in large measure.

He was apparently dealing with the question of charges, which you have not touched upon at present, and the question of dishonesty, and his argument is that unless the officials of the court are in some way accountable to and under the jurisdiction of the Superintendent, many of the benefits which we hope will accrue from the appointment of a superintendent cannot materialize. Have you any suggestion to make on that?—A. I think that is very sound, except that I understood that under the duties of the superintendent he may make investigations under the Bankruptcy Act. There are certain conditions existing in certain cities which warrant investigation, and I presume the superintendent would investigate, and take his report to the Chief Justice of the province concerned who appointed these men. I know Mr. Weaver was getting at the practice of some registrars and official receivers who in addition to their salary get fees.

Q. We will come to that in a moment. There has been suggested, by the Canadian Bar Association, I think, an amendment to the Act which is to be found at page 23 of No. 1 of the Minutes, that would give to the Court—and I believe the Court by judicial interpretation has been held to be the registrar.——A. Yes.

Q. ——the power to investigate. The amendment is in this language.

> If, on being required by the Court, at any time, to account for his deficiency of assets to meet his liabilities, or for the loss of any substantial

part of his estate incurred within two years next preceding the making of the authorized assignment or of a receiving order as the case may be, any person who has made an authorized assignment or who has been adjudged bankrupt, fails to give a satisfactory explanation of his deficiency of assets to meet his liabilities or the loss of any substantial part of his estate incurred within two years next preceding the making of the authorized assignment or of the receiving order as the case may be, the Court may order him to be committed to the common jail. . .

That is the registrar.—A. I wonder was that meant to be the registrar?

The CHAIRMAN: Mr. Grundy will tell us.

Mr. GRUNDY: That was copied from the English Act, which has a very similar provision.

The CHAIRMAN: Under our practice the registrar has been held to be the Court.

Mr. GRUNDY: The Court or the Judge. Under the English practice the registrar is a very different individual from ours. But put the power in the hands of the registrar in Canada.

The WITNESS: That is the article I referred to, but I am not sure whether what is meant there is the registrar or the Judge. In other words it is shifting the responsibility from a criminal court Judge to the bankruptcy court Judge. When we prosecute them now we usually take a warrant out under the criminal code, it would perhaps be a shorter procedure the other way. I am sure it would. I would like to be satisfied, though, whether it means the registrar or the Judge.

The CHAIRMAN: I was wondering just how far it is competent to Parliament —I do not want to raise a constitutional issue—to give to a person who is not a judge the prerogative of committing a person to jail for twelve months and fining him $5,000.

Mr. MACDONALD: I think the definition of the Court means a court which is invested with original jurisdiction in bankruptcy under the Act. I do not think the registrar would have the power under our Act.

The CHAIRMAN: I am willing to concede that, but unless my memory is wrong there are judgments which hold that the registrar is competent to perform functions allotted to the Court.

Mr. ELLIOTT: The interpretation section provides (1) "Court" or "the court" means the court which is invested with original jurisdiction in bankruptcy under this Act; while; (*v*) "judge" means a judge of the court, which is by this Act invested with original jurisdiction in bankruptcy; and (*gg*) "registrar" includes any other officer who performs duties like to those of a registrar.

The CHAIRMAN: I am not controverting that, but I am almost confident that a number of judicial decisions have held that the registrar was the Court, in some instances at least.

The WITNESS: I am only interested in the detection and prosecution of fraud, that is my job, that is why I have only touched on these points. In connection with that work the principle point I see in the amendment before you is the appointment of superintendent. You know the trustee situation in Montreal is perhaps worse than anywhere else in Canada; if a man has failed a few times and cannot get any more credit he takes a job as trustee. That is an absolute fact. We have trustees who have been through bankruptcy as officers of companies many times. They hold their position by fake claims of brothers-in-law and sisters-in-law voting at the first meeting.

I see another point about the offer to compromise before it is mailed to the creditors, it must be approved by the inspectors, that is important. Then another

important point is voting at the first meeting of creditors, it is very sound to restrict those entitled to vote for trustee, leave out the relatives. The only suggestion I have is that you put the mother-in-law as one of the relatives who cannot vote.

Hon. Mr. LAPOINTE: Even although she is a creditor?—A. Yes, her claim will be collated according to law, but if you could just realize what we are going through in Montreal. A fellow failed last year with liabilities three months before he failed of $12,000. Three months later he failed with liabilities of $112,000. When it came to the voting at the first meeting the debtor walked up with his own nominee as trustee and filed a claim against his company, it was a machinery company, a limited company, and his wife filed a claim, claiming that she wrote a book on the Heavens and the stars and sold it to the machinery company for $50,000, and she voted on that claim. It is ridiculous. To-day the official Receiver can only concern himself at those meetings with the counting of votes. This man, by the way, appointed four inspectors, and just let the bank manager sit as a fifth, and appointed his own trustee. Two weeks later he got disgusted with the bank manager, called another meeting of creditors and threw him out. That is an absolute fact.

Another point, on the discharge of the debtor, I see if no dividend is paid the inspector must report to the superintendent. That also is important. They are major points which if they became law would be of tremendous assistance in this task of preventing fraud. Immediately you make it a disgrace to go into bankruptcy, instead of a convenience as it is to-day, then we will have fewer bankruptcies. Fewer bankruptcies will bring bigger returns.

By the Chairman:

Q. What have you to say as to the cost of liquidating bankrupt estates, and what irregularities if any arise out of the charges of trustees and lawyers?—A. You will notice it is a problem of geography. It depends on the ability of the registrar to a large extent. A registrar who is on his job can cut down the cost immensely. I was in the King Edward Hotel at Toronto two years ago, I met a Montreal trustee. I said, "What are you doing here?" "I have come to get a bill of costs taxed," he said, "like a fool I took it to Montreal first." There was a bill for a lawyer of $1,500 and he O.K.'d it. Then he found the mistake and he had it taxed in Toronto. I said, "Best of luck." I met him in the afternoon, I said, "How did you get along?" He said, "Awful. Reilly scratched his pen through the $1,500 and substituted $300." You cannot legislate against that sort of thing. I believe in paying trustees and paying them well. I do not think you will ever get dividends from incompetent trustees and incompetent officials.

Mr. BUTCHER: Do you think it is right to permit inspectors to waive the taxation of costs? I ask that question because I have a statement here which shows that the costs of administering an estate of $6,129, which was realized very promptly, amounted to $3,600, and the footnote says:

> The above statement has been approved and taxation waived by the inspectors of the estate.

The WITNESS: If I were Toronto I would insist that every bill be taxed. But I tell you frankly I do not give a hoot in Montreal to-day, or many other cities. I speak perfectly frankly. What is the use? But in Toronto and some other cities I would certainly insist on every bill being taxed. It depends entirely on the man and his conception of his duty.

By the Chairman:

Q. What have you to say with regard to the revenue derived by the provinces from bankruptcies. I refer to stamp charges and incidental fees exacted by the provincial courts, as far as they are complementary to the administration of the Act?—A. I do not think I am competent to answer that question.

Q. There has been an expression here of a universal desire in the Province of Quebec that farmers be denied recourse to the Bankruptcy Act. Have you any opinion about that?—A. I think it would injure the farmer to some extent, it would reflect on his credit. I know a lot of people are selling a great deal of stuff to farmers, syrup buckets, etc., and if this particular class were not allowed the privilege of bankruptcy, what would happen? They are insolvent, they would just go on and on and the creditors would have no recourse.

Q. Well, they would have the recourse which they have always had under the provincial law of exacting a cession de bien, which means that you could take away from the farmer everything that is not privileged, but he never gets a discharge. He owes until he has paid. That is the law of the Province of Quebec, and has been as far as it is enacted by the legislature from time immemorial.

Mr. SPEAKMAN: Under the present Act a creditor has no recourse, he cannot force him into bankruptcy. It is no real protection to that class of creditor.

The CHAIRMAN: Mr. Inns understands that the farmer cannot be coerced into bankruptcy, but he may avail himself of the Act.

The WITNESS: I would rather limit my few remarks to fraud in bankruptcy, I am not competent to speak of the other.

The CHAIRMAN: Any other questions?

Mr. BUTCHER: I referred to a certain estate in which the costs were unduly heavy. Would this be a proper time to place that on file? This is a case of the estate of L. M. Zavitz, of Punnichy, Saskatchewan. The receipts show:

Cash on hand and in bank	$ 393 20
Sales at store	237 50
Proceeds sale of stock and fixtures	5,359 00
Sundry refunds	14 99
Refund insurance	124 69
	$6,129 38

I may say I know the circumstances of the case, and there was a very prompt realization of the assets.

DISBURSEMENTS

Expense of representative, wages at store prior to receiving order, taking stock, checking same to purchaser, investigating *re* stock removed, and endeavouring to recover same	$ 1,125 03
Expenses at store	75 15
Advertising, Notice to creditors, etc.	49 32
Telegrams, phone calls, stamp tax, circulars, statements, etc.	190 72
Travelling expenses	136 40
Legal fees and disbursements *re* receiving order, three examinations, court orders *re* receiving of goods and notices disputing claims, garage building, etc.	1,180 90
Insurance	473 35
Preferred claims	285 60
Inspector's fees	48 00
Trustee's Discharge	25 00
Dividends to creditors, 7½ per cent	1,940 76
Commission to trustee	306 45
Balance for final dividend, 1·13 per cent	292 70
	$ 6,129 38

You will note that out of $6,129 realized only $2,599 found its way to the creditors.

Mr. SPENCE: That is the custom.

The CHAIRMAN: Gentlemen, we have heard all the witnesses available with the exception of Mr. Wegenast, the representative of the York County Bar Association. He is before the Banking and Commerce Committee of the Senate where the Insurance Act is under discussion.

Apart from Mr. Wegenast I think we have just about exhausted the quota of witnesses. There is Mr. Nantel, who is the secretary of the Committee of the Canadian Bar Association which made the investigation and furnished the material upon which this Bill is based. He will be available on Tuesday morning if that meets the convenience of the Committee. Unless some of the many gentlemen with whom we have communicated come I think we may probably not have to hear witnesses on more than one day after this.

The Committee adjourned to meet at 3.30.

AFTERNOON SITTING

The Committee resumed at 3.30 p.m.

The CHAIRMAN: We have as our witness this afternoon Mr. F. W. Wegenest, of the York County law association, and I will call on him now.

F. W. WEGENEST, called.

The WITNESS: Mr. Chairman and gentleman, I am here at the behest of the York County Law Association. York County as some of you may not know is the county which contains the well-known city of Toronto, and Toronto in turn contains more than half the lawyers of Ontario; and while I do not claim to express the personal views of every lawyer in Toronto, I can say that the matter of the amendments, and more particularly the form of the memorandum prepared by the Canadian Bar Association, has been considered at several meetings of the council which is a large and rather representative body, and I am commanded to put their views before you. I am a little doubtful whether what I have to say merits all the trouble you have taken, Mr. Chairman, and that I have taken to be here. I understand there was one meeting this week at which I was supposed to attend. By some mistake, which I cannot explain yet, I did not know that the meeting was on that day. I was in the city, as a matter of fact, with the idea of trying to work it so that I could be here and at a meeting of the Senate Banking and Commerce committee at the same time.

The York County Law Association thinks that it is not necessary to have a superintendent of bankruptcy or a department of bankruptcy. They agree that it is desirable that there should be some form of inspection or checking up of the activities of the trustees, and they think that the Minister should have at his command an official something like the Inspector of Legal Officers in Ontario, whose function some of you know and the rest can imagine. I might say that if the sheriff or bailiff of the court or an official connected with any of the offices in Toronto is found failing in his duty, somebody writes a letter to the Inspector of Legal Officers and the matter is investigated and made right. He also makes periodical visits. It was thought by the York County Law Association that something like that would be sufficient in the meantime, at all events, until the necessity for some elaborate organization should appear, and if an official of that kind were available to check up the delinquents it would not be necessary to proceed with the scheme of licensing trustees against which there are objections, which have, no doubt, been discussed here. I am at a dis-

advantage in not knowing what the tenor of the discussion has been, but I have no doubt there has been objection to a system of licensing trustees—that the licensing of trustees would be unnecessary if you have some system whereby grievances could be rectified. We know, of course, there are some grievances. I do not think I need say any more.

I understand your deliberations have gone long past that, and yet with the weight of opinion which there is behind it I ask your consideration of that point of view with perhaps only this in support of it, that this is not the time to elaborate and increase anything like your offices. It is very easy to argue that we have too much government, too many officials, and too much expense at the present time without proceeding in these times at all events to elaborate and increase; and if some simple device such as is suggested by the York County Law Association were able to fill the immediate needs, I submit that it is worthy of your consideration.

Now, will you allow me, Mr. Chairman, to pass on. The other matters that the York County Law Association had in mind to bring to your attention have all been fairly well covered. In fact, some are covered in the Bill itself, which, I think, we may flatter ourselves has adopted some of our suggestions. But passing from that, I want to make a personal suggestion. In England bankrupt companies are wound up under the Winding-up Act, and in due course the company is wound up and goes out of existence. Some time after the Bankruptcy Act came into force in Canada, by a process of legal decisions and legislative enactments it was arranged that bankrupt companies should be wound up under the Bankruptcy Act, and it is now not possible except under the Bankruptcy Act to start the winding up of a company which is bankrupt on the ground of insolvency. The result is that when the trustee is through with the company it remains a company to lead a disembodied existence in the upper ether forever. It is not wound up; it is never ended. I suggest to you that there should be something done one way or the other either to end the company or give it a new chance.

Now, I had a case a short time ago in which I had to look after the affairs of a company which went into bankruptcy, having amongst its assets a municipal franchise which was not assignable without the consent of the municipality. Therefore, it did not pass to a trustee in bankruptcy, and it could not be sold. It was no good to anybody else. After the company had been cleaned out of all its other assets, I advised them to go on working that franchise and they did for several years. The franchise has now been given up. But there was a case of a company which was able to go on; its existence had not been terminated; even its directors remained in office, and the directors went on collecting the money in connection with this municipal franchise. In time, I suppose, the court might have appointed a receiver to take over the money, but we have made provision against that so that we would not have very much money in the cashbox at any time.

I suggest consequently that some arrangement might be made—an amendment which would make it possible to discharge a company from bankruptcy. I do not see any reason in principle why a company should not be discharged as well as an individual. Now, it is almost arguable under the present Act—I have here a few points which would be arguable—that the company could go to the court and ask for a discharge.

By the Chairman:

Q. Under section 153 there is provision for going from the surgeon to the undertaker; after you have distributed the assets you can have your company properly interred?—A. It must be killed first.

Q. It has been killed, and you get it buried by the assistance of the Act?—A. The company is not killed; it is still alive, and you have to execute it first.

Q. That is true. It is without assets?—A. Yes. In practice in Ontario, at all events, I do not think one company in one hundred that goes bankrupt ever thinks of surrendering its charter or winding up; it just does nothing, and, in fact, the odd fifty dollars they would need to surrender the charter comes very handy to the trustee by way of remuneration.

By Mr. MacDonald:

Q. If their annual fees are not paid, does not the registrar of the joint stock company wipe them out?—A. Not either in the Dominion government or the provinces of Ontario, Quebec, New Brunswick or Prince Edward Island. They do under the other system where they register the company as in Alberta and Saskatchewan. In the Dominion the department may, after three years —they do put an end to its existence.

Q. They rescind the commission.

The CHAIRMAN: Have you prepared any amendments embodying your suggestions?

The WITNESS: No.

By Hon. Mr. Lapointe:

Q. Were the views of your York County Bar Association submitted to the Dominion Bar Association and discussed with their committee?—A. No, they were not. The reason for that was that it was felt there was not time. I have forgotten the occasion, but it was thought the views had to be expressed within a certain time, and they sent a letter which is before you, but it is not altogether in point now, because of the form in which the Act was ultimately brought in.

By Mr. Turnbull:

Q. I think you said there was some objection in the mind of the Bar Association you represent with regard to the principle of licensing trustees; would you state those objections?—A. I am not sure that I can. I would be drawing from my own experience if I did, and that is not what I am here for.

Q. Can you give me your personal opinion.

Mr. SPEAKMAN: Reference was made to the fact that we had probably heard those objections. As a matter of fact, as far as I remember, we have heard no such objections from anyone until to-day, regarding the licensing of trustees.

The WITNESS: Now, you put me under some embarrassment. There are a certain number of firms in Toronto who would be likely to have a much greater monopoly of the business of winding up bankrupt estates than they have now. It, of course, depends. Now, I am drawing on my own imagination—it depends upon how you are going to administer this. Suppose a man is bankrupt in Owen Sound and wired at North Bay, are you going to have a trustee in every one of those places? Or will the bankrupt have to wait until the superintendent gets a trustee appointed and examines the various applicants? Are you going to start and have this host of licensing trustees all over Canada who will be available whenever a bankruptcy occurs, or will they have to come from distant parts in Ontario to Toronto and in Quebec to Montreal? I do not think there is any third alternative, unless it is that when a bankruptcy occurs at Chicoutimi, or wherever it may be, you write in to the superintendent of bankruptcy and have a man appointed.

The CHAIRMAN: As the system works now with each province is divided into a number of bankruptcy districts or divisions—I have forgotten which term is used, but I think it is districts—and in practice there is in each such district one or many individuals or firms who make a business of winding up estates of bankrupt companies or firms, and I have assumed that the same practice would continue and that men in each one of these districts would qualify by an application, and, after having met the requirements of the department, be in position to practice their profession—if you choose to call it that—when the occasion arises.

The Witness: It is possible to imagine all sorts of methods of working it out, but the result certainly depends on which one you select. I have in mind a little village called Killarney on the north shore of Georgian Bay. It is appurtenant to Manitoulin Island for election purposes. Now, it is a little place of four or five hundred people. You have to consider what is to be done with a man who is not in good shape. Suppose you have to go to Little Current. There may be no communication with Little Current for two or three weeks. That is not so very odd in this country of ours. Men of substance live in out of the way places. If anything goes wrong, have they got to go to a place where there is a licensing trustee in order to have something done about a company in the hands of a custodian.

The Chairman: In each bankruptcy division—each province has a district—and in each district there is a division and in each division there is a receiver who, in the province of Quebec, is invariably an official of the court. Mr. Elliott can tell us if the same rule obtains in Ontario.

Hon. Mr. Elliott: It is practically so; the clerk of the court represents him in each county.

The Chairman: The man who wishes to make an assignment goes to the local officer of the court who is an officer under the Bankruptcy Act and makes his assignment. Then, in the ordinary course of events, a custodian is appointed, a trustee in bankruptcy is selected.

The Witness: I have gone through the process. I suppose the answer to what I have said is that the man who now has to go to Killarney has to go to Sudbury.

The Chairman: That is probably where his creditors are—the centre. The distributing point, if he is a merchant, is generally the place where the creditors are located.

Mr. Turnbull: There is no change proposed where he would have to make his first stop.

The Witness: There is no question of it, it would be a very difficult thing. Take this little village, it would create great difficulty and unjustifiable expense if it were necessary to appoint a man in Sudbury to administer that estate. Why, there are half a dozen men in the village who can do it well.

By Hon. Mr. Elliott:

Q. Did you suggest, Mr. Wegenast, that whosoever the creditors should select, they should have the right to select apart from whether he is an official—leave them free?—A. Yes.

Q. And cut out the travelling expense and the cost of bringing a man from some district to do this work?—A. Yes, that feature, I think I can say, has not worked unsatisfactorily in Toronto.

The Chairman: I have asked Mr. Finlayson to come before our committee at the next meeting. He is the superintendent of Dominion Insurance. While there is nothing definite, and I do not suppose it comes within the province of this committee to say who is going to administer the Act, it did occur to me that it might be of some interest to the members of this committee to find out from Mr. Finlayson some of his views about the administration of the Act. If it meets with your approval we will adjourn until 10.30 o'clock on Tuesday, when Mr. Nantel will be here from Montreal and Mr. Finlayson of Ottawa and possibly a gentleman from Saskatchewan.

The Committee adjourned to meet Tuesday, April 26, at 10.30 a.m.

SESSION 1932

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 41, AN ACT TO AMEND

THE BANKRUPTCY ACT

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

TUESDAY, APRIL 26, 1932

WEDNESDAY, APRIL 27, 1932

WITNESSES:

Mr. W. J. Reilly, Registrar of the Bankruptcy Court, Toronto; Mr. Arthur Delisle, Registrar of the Bankruptcy Court, Montreal; Mr. G. D. Finlayson, Superintendent of Insurance, Ottawa.

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1932

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS, Room 268,

TUESDAY, April 26, 1932

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met at 10.30 a.m., the Chairman, Mr. Hackett, presiding.

Members present: Messrs Hackett, MacDonald *(Cape Breton South)*, Gobeil, Anderson *(Toronto-High Park)*, Spence, Kennedy *(Winnipeg South Centre)*, Turnbull, Fraser *(Cariboo)*, Butcher, Elliott, Jacobs, Speakman, Carmichael, 13.

In attendance: W. J. Reilly, Esq., Registrar of the Bankruptcy Court, Toronto; Arthur Delisle, Esq., Registrar of the Bankruptcy Court, Montreal; G. D. Finlayson, Esq., Superintendent of Insurance, Ottawa.

Also present: Messrs, F. P. Varcoe, Justice Department, Ottawa; H. P. Grundy, Henry Detchon and A. S. Crighton, Winnipeg .

The Chairman read a telegram and a letter received from Mr. G. T. Clarkson, Toronto, with regard to the Bill now before the Committee. These were ordered filed to be taken into consideration by the Committee.

Mr. Reilly was called and gave evidence in the light of his experience as a Registrar under the Bankruptcy Act. Witness questioned and retired.

Mr. Delisle was called and also gave evidence in his capacity as Registrar. Witness questioned and retired.

Mr. Finlayson who had been asked to appear before the Committee at this sitting, kindly consented to allow the above witnesses to be heard, stating it would be convenient for him to be heard to-morrow.

The Committee adjourned at 1.30 p.m., until Wednesday, April 27, at 10.30 a.m.

R. ARSENAULT,
Clerk of the Committee.

HOUSE OF COMMONS, Room 268,

WEDNESDAY, April 27, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met this date at 10.30 a.m., the Chairman, Mr. Hackett, presiding.

Members present: Messrs Hackett, MacDonald *(Cape Breton South)*, Ganong, Gobeil Anderson *(Tronto-High Park)*, Kennedy, Fraser *(Cariboo)*, Butcher, Jacobs, Lapointe, Speakman, Carmichael, 12.

In attendance: Mr. G. D. Finlayson, Superintendent of Insurance, Ottawa.

Present: Messrs. F. P. Varcoe, Justice Department, Ottawa H. P. Grundy, Henry Detchon and A. S. Crighton, representing the Canadian Credit Mens' Trust Association.

Mr. Finlayson was called and gave evidence regarding the appointment of a Superintendent of Bankruptcy, specially as to the way such a proposed branch in the Government service could function, as compared with the branch under his supervision. Witness retired.

The following memoranda were tabled and ordered filed into the record:

Suggested amendments to Bill 41, submitted by Mr. Kennedy for Mr. Turnbull whose unavoidable absence from the House will prevent him from attending future sittings of the Committee;

A statement showing the attitude of the Alberta Government in relation to the general subject of Bankruptcy, filed by Mr. Speakman on behalf of the Hon. G. W. Hoadley, Minister of Agriculture for Alberta;

A statement of "Commercial failures in Canada for December, 1931, with totals for the Calendar Year 1931" compiled by the Dominion Bureau of Statistics, together with a statement from the Dominion Statistician to the Deputy Minister of Justice, showing the aggregate receipts of the last 2,200 estates making a final dividend statement. These being submitted by Mr. Varcoe.

The Chairman having announced that no other witnesses had definitely expressed their desire of appearing before the Committee, it was unanimously agreed that the Committee adjourn until Tuesday, May 3, at 10.30 a.m., in order to give members of the Committee an opportunity to consider the evidence adduced before them. The Chairman stated that a summary of the evidence would be prepared by himself and the Clerk for the benefit of the members of the Committee.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons, Room 268,

April 26, 1932.

The Special Committee on Bill No. 41, an Act to amend the Bankruptcy Act, met Tuesday, April 26, at 10.30 a.m., Mr. Hackett, presiding.

Mr. W. J. Reilly, called.

By the Chairman:

Q. Mr. Reilly, you are the Registrar of the Bankruptcy Court in Toronto? —A. Yes, Mr. Chairman.

Q. How long have you been in that position?—A. I have been Registrar for about—nearly five years; But I have been closely associated with Bankruptcy work for about eight years as assistant to the former Registrar, Mr. Holmstead.

Q. You have taken notice of Bill 41?—A. I have seen it, sir.

Q. What is the extent, the territorial extent of the jurisdiction over which your Court—?—A. The whole Province of Ontario.

Q. How many trustees in bankruptcy are assisting in the adminstration of the law in the Province?—A. Well, I could not answer that correctly because there are certain ones, of course, who do but very little, only have an occasional estate in out-of-the-way places; but I would say that, generally speaking 25 or perhaps less do 95 per cent of the bankruptcy work in Ontario.

Q. Who is the Official Receiver for the Province of Ontario—for the district of Ontario, isn't it?—A. There are some 13 or 14 official reecivers in Ontario, at different local centres.

Q. In different divisions?—A. In different divisions.

Q. I understood you to say that you were the Registrar for the Court which had jurisdiction all over.—A. The point is this, Mr. Chairman, there is only one district of Ontario for which there is a Registrar, but the district of Ontario is divided into some 13 divisions in each of which there is an official Receiver.

Q. Yes, but you are the only Registrar?—A. The only Registrar in the Province of Ontario from Kenora to Cornwall.

Q. What is your view of this provision of the Bill which would create a Department of Bankruptcy under a superintendent in the Department of Finance?—A. Of course, I can only speak for Ontario, and while it is not for me to say how satisfactorily we think the administration is carried on in Ontario, yet probably with some additions to the Act a superintendent might not be necessary at all in so far as the administration of the Act is concerned; but there are other features of the Act which receive little or no attention at present, over which I think a superintendent might do very useful work—that is, more particularly, in acting as a sort of liaison officer, or if you might call him such, with certatin powers to act as a sort of co-relating person between the Court, the creditor, the trustee, and all parties interested, because now there is a weakness in the Act. Again, there is another feature that probably we feel more in Ontario the need of some assistance, than any other, and that is in regard to the bankruptcy offences. As Registrar and having a knowledge of

practically all prosecutions, because they come to my ears sooner or later, without—and I hope there are no particular Crown Attorneys or County Judges here—practically all the bankruptcy cases go before the County Criminal Court, with the almost unanimous result that it is futile and a waste of money.

Q. Is that because of inadequacy in legislation or is it a case of weak prosecution, or is it a case of general indifference to these offences?—A. Weak prosecution generally, engendered by lack of cohesion between the Province and the Dominion. As the Act now reads the last section places the administration of the Act under the Dominion in the Department of Justice, and consequently the Crown authorities in the Provinces just will not assume the responsibility of adequate prosecution. In fact, I haven't it with me, but I have a letter in my file in which I have brought to attention one particular case which I have in mind, where they could not get a prosecution, and the reply from the Department at Toronto was: It is not our matter, that is a matter for the Dominion.

Q. Well now, stop there for a moment. How many judges in Ontario deal with bankruptcy matters?—A. We have one bankruptcy judge appointed as course, all the other judges have jurisdiction which they exercise very, very such under the Act by the Chief Justice, under section 172, I think it is. Of occasionally, only in cases of emergencies.

Q. Then your criticism applied exclusively to criminal prosecutions arising from offences committed under the Act, and the criticism does not apply to the administration of the Act in so far as it deals generally with the distribution of assets between creditors?—A. That is right.

Q. By whom were you appointed?—A. By the Chief Justice of Ontario.

Q. By whom are you paid?—A. I am paid by salary by the Province of Ontario to whom the fees are paid.

Q. Yes.—A. At least all fees so far as my office is concerned, as collected by stamps.

Q. All fees?—A. All fees.

Q. And does the entire revenue from stamps go to the Province?—A. Entirely.

Q. What does that amount to per annum?—A. I cannot say for the other parts of the Province, except Osgoode Hall. I did not bring my figures, but the revenue of my office amounts to about $12,000 a year; and then, of course, there is the Official Receiver in Osgoode Hall who collects all in stamps somewhere around $4,000, which goes, of course, to the Province, as does all in stamps.

Q. Is 80 or 90 per cent of the bankruptcy business done in Toronto—80 or 90 per cent of the whole Province?—A. No, I would hardly think as much as that, because there are some large centres like Hamilton, London, Windsor, and Ottawa here; but I would say probably about 70 per cent would be pretty nearly a fair average.

Q. Do you receive anything as a fee upon any bankruptcy proceeding yourself?—A. No.

Q. Does the Official Receiver??—A. No Sir, I should say—

Q. Is that statement equally true of all other officers exercising their duties under the Bankruptcy Act in Ontario?—A. I believe so, Sir. I might add to that that most of all of the official receivers, I think except one, in the Province of Ontario, are the local registrars of the Supreme Court in their respective counties.

Q. Yes.—A. And, of course, under the fees system in Ontario I believe the fees that they collect from bankruptcy are added and totalled with the fees which they take in under the ordinary duties of their office.

Q. What expense is incurred by the Province other than—for the administration of the Bankruptcy Act, other than the payment of your salary and the payment of the salary of your assistants to offset the $12,000 which goes to the Exchequer of the Province from your office?—A. To answer that I can only

answer by mentioning those who are in the pay of the Province for bankruptcy purposes. Speaking of Osgoode Hall I am assisted with a clerk, a girl who is becoming very efficient in the fyling of documents and in doing the work for the Registrar's office; with the assistance, of course, of a Court reporter who is paid by the Province, and who is continually busy because of the numerous examinations and work of that sort which he has to transcribe. The Official Receiver of Toronto is Mr. Lennox. He is an assistant master and is paid by the Province. He has other duties which he carries on as the master in addition to his official receiver's work.

Q. Is he paid any salary for his duties as Official Receiver?—A. No.

Q. Has he any staff that he would not need to have if he were not an official receiver?—A. Not other than he uses—or put it this way, at times when it is not possible for him to preside at meetings of creditors at Osgoode Hall he sometimes obtains or appoints someone else from the Hall to sit in his place. As assistant master he may have a reference that ties him up for a particular time and occasionally he may have to use some person else to act as Chairman of the first meeting of creditors.

Q. Well, going just a step further with the disbursements, because one of the complaints which we have heard here is that creditors very frequently derive little or no benefit from bankruptcy proceedings and many have said that the entire estate was consumed by the cost of winding up, whether it is by the cost of the Court, or lawyers' fees, or trustees in bankruptcy. Can you state what are the charges levied by the Province on a petition in bankruptcy, Mr. Reilly? —A. As I find it—

Q. A third part?—A. I try to regulate myself by the tariff which provides, for the fyling of a petition $2, and each additional fyling connected therewith, 20c.—that is under part 3 of the tariff.

By Mr. Jacobs:

Q. I think the Chairman refers to the petition in bankruptcy?—A. Petition in bankruptcy, $2.

By the Chairman:

Q. That is what he has said.—A. That is what we collect, sir.

Q. I am not speaking about fees, this is the levy of the Province, the stamp—

Mr. JACOBS: I thought that was the attorney's fees.

The CHAIRMAN: Oh no, I am asking about the fees only.

Mr. JACOBS: That is, the fees due to the Government?

The CHAIRMAN: Yes.

By the Chairman:

Q. And no other charge is made in the nature of a fee which is paid either to yourself or to the Government?—A. None whatever, sir.

By Mr. Kennedy:

Q. Don't the Registrar get a fee on these bankruptcies, about $15?—A. No.

Q. Is it the same in the other Provinces?—A. I can only speak for Ontario. I don't get it. I don't see any place in the tariff for it.

By the Chairman:

Q. Now, take the discharge of a trustee; what amount is exacted by the Province first if it is the result of a composition; and second, if it is the result of a dividend?—A. You mean a trustee's discharge, sir?

Q. Yes.—A. We collect a fee of $5 on the application and 20 cents on each filing that may be attached or accompany it, and $2 on the order when it is issued—usually $8, more or less.

Q. Yes. Is the charge the same if it is on a composition or if it is the result of a dividend?—A. Yes, the same.

Q. You make no distinction between that?—A. No.

Q. Now, what are the charges exacted by the Government on a compromise? —A. Just about the same, there may be a couple of dollars more. They charge $5 on the application, and then there is a payment which, under the form of the Act, is in the nature of an order for which there is a two-dollar fee and then 20 cents on each filing which is filed on the application, and $2 on the order; amounting to $10, more or less.

Q. When you say more or less, what does that mean?—A. $10 plus or minus certain 20 cent filing fees.

Q. Between $9 and $11, then?—A. Well, it is generally. Some trustees will bring in a report that requires us to charge them 60 to 80 cents for filing; the fee, I think, would be $9, and filing fees which might amount to $1, $1.20, or $1.40 as the case might be.

Q. Now, what are the rates exacted by the Province on the discharge of a debtor?—A. About the same as a composition.

Q. About $10?—A. About $10.

Q. Is there any perquisite, or revenue of any description, to yourself or any officer in your Department on advertising required by the Act?—A. Oh, we don't do that, sir, at all. I don't think there is any authority that I find in the Act for our doing it.

Q. I see.—A. That is purely a matter which is done by the custodian, that is, in the case of the first meeting of the creditors, and his charge is part of his disbursements, and any subsequent advertising by the trustee in the sale of the assets, of course, is taxed as part of his disbursements.

By Mr. Elliott:

Q. Has there been any variation, so far as you know, from the scale of fees set under the Act?—A. None whatever, Sir.

The CHAIRMAN: Are you speaking of the third part—?

Mr. ELLIOTT: Yes, the Bankruptcy Act—

The CHAIRMAN: Part three?

Mr. ELLIOTT: Yes.

By the Chairman:

Q. What fees or disbursements are exacted by the Official Receiver on an assignment made to him?—A. Altogether they amount to about $14 and then there is a $4 fee as chairman of the meeting of creditors: about $18.

Q. Now, when you say the fee, does that mean that the Official Receiver gets $4 in cash?—A. Pays that in stamps, Sir.

Q. It is revenue to the Province and not to the individual?—A. That is right, Sir.

Q. Administering the Act. Can you give us the details of this $14 which goes to the Official Receiver? A. Well, I made it up some seven or eight years ago, and I don't think I have looked at the individual items since. What we do is this: In order to save trouble, and the difficulty of a stamp being brought in every time a document is filed which should and must be filed, we arrange at the beginning to collect all the proper fees that should be collected in order to file the proper papers that we receive. There is first, the assignment; there is a statement, a preliminary statement of affairs—I have just forgotten what

that is; then there is the custodian's bond; then there is the letter, there is the questionnaire; then there is the statement of affairs; and subsequently the trustee's bond. These, as I have made them up years ago amount to about $14.

Q. Before you leave Ottawa can you, with convenience, prepare a little memorandum for the convenience of the Committee showing how this $14 is arrived at in detail?—A. I can, sir.

Q. Will you leave that with the clerk?—A. I will, sir.

Q. I have one more question and then I have finished with you. It has been suggested that in the event of the bill becoming law that it would be unwise to permit a trustee to qualify on one bond for all the estates that he might have under his administration—you notice that the Act provides that to qualify as a licensed trustee the trustee must be bonded?—A. Yes.

Q. It has been suggested that if only one bond were taken this might restrict the administration of the Act to trustees of rather large means as no man of ordinary means, could obtain such a large bond and there might be the disinclination of a bonding company to issue such a large bond, and it has been suggested that a smaller bond be exacted as a qualifying bond, and that the practice of requiring a bond for each estate be continued. Have you any suggestions on that score?—A. The question of a bond, sir, is a difficult matter on which to speak. So far as a Governmental bond is concerned, I am quite opposed to this, for this very good reason, that every time we have tried to collect on a Government bond we could not do it. We find in many cases that for some reason or other the Receiver General has cancelled it, and found the estate without a bond—by what right or authority he had cancelled it, I do not know; but I have found that in more than one instance. So we find in these old estates, before 1923, the winding up of which went on for years and years, we find later when we needed to collect, we find the bond cancelled. The question of one bond looks like this to me, it is the amount involved which trustees handle. It varies so much that it would be almost impossible to set any scale on which you could arrange a system of bonds. You might have if you were going to licence them. A bond is evidence of good faith in each case, probably larger in some cases than in others; but at the same time I think that you would have—it would be better to have an individual bond in each case.

By Mr. Elliott:

Q. Can you in your practice see any difference in theory between the bond given by the administrator of an intestate's estate?—A. None whatever, sir.

Q. And the bond given by the man who is going to administer a bankruptcy estate?—A. None whatever, sir; except what I saw in the evidence—I had an opportunity to read two or three of these pamphlets of the evidence in which some reference was made to a bond being cancelled in the province of Quebec and of the difficulty of obtaining a new bond which places the trustee in a difficult position. I don't know what they do elsewhere but my theory of that bond is that it does not cancel, it is a specialty contract and it is good for twenty years, and no bonding company once it is in our hands can get rid of it until then, so that as we wind up the individual case and give him his discharge, our practice has been that we do not deliver the bond. After the trustee gets his release we still hold the bond because we do not know what fraud he may have committted during the course of his administration of which we have no knowledge, so the form which I make—while the Act provides that it shall be delivered up and cancelled—I change that to say that we still retain the bond in our office; and I hold that as a specialty contract. It is good for twenty years, sufficient to clean up many of the estates.

Q. Have you any reluctance, and I do not press the question if you have, to telling us what your remuneration is?—A. None whatever, sir. I get $4,600 a year which I often think is not enough for what I do.

The CHAIRMAN: Are there any other questions which any of the members of this Committee would like to ask this witness?

By Mr. Speakman:

Q. Mr. Chairman, if I might be permitted to ask the witness a question: I understood the witness to say in the earlier part of his evidence that some of the practices now complained of would be lessened were the provinces to have greater powers under the Act than they have at the present time. That is my understanding of what was said, and if that was said I would be glad if that could be enlarged?—A. No sir. What I think I intended to say was this; that the question of jurisdiction has been so much disputed as to responsibility that, in my opinion, it should be placed squarely on the shoulders of the provinces or the Dominion, more particularly in so far as criminal prosecution is concerned.

Q. The difficulty suggested was doubt as to the jurisdiction over certain matters. It would be lessened if a clear delineation were made?—A. Yes. The situation as I see it very definitely—might I be permitted to make use of this statement—that it is pretty much a case of passing the buck.

The CHAIRMAN: It is not so much a question of assuming the jurisdiction, as who will assume the onus of prosecution.

The WITNESS: That is it, sir.

Mr. ELLIOTT: There is no doubt about the jurisdiction for prosecuting these offences.

The WITNESS: The Act says this Act shall be administered by the Minister of Justice.

Mr. JACOBS: But, is it?

The WITNESS: Oh yes, to a large extent, to the point of official responsibility and all this sort of thing.

Mr. ELLIOTT: But the criminal part of it is placed squarely on the shoulders of the Attorney General of the Province, isn't it?—A. There are a great many sections in the Bankruptcy Act which are very similar to the criminal code. But if an offence or information is laid under the Bankruptcy Act as such, the fact is that we just cannot get them to take it up by reason of instructions which they have received from the Attorney General. I have a letter on my fyle saying we don't assume the responsibility, it is the Dominion's duty to prosecute because they have retained to themselves the administration of the Act.

The CHAIRMAN: Well, if that is the attitude, what is the excuse for accepting revenues from the Act which exceed the salaries paid?

The WITNESS: Well, I can't give any reason for that, sir.

Mr. ELLIOTT: There is not the same objection at any rate.

The WITNESS: That is the Attorney General.

By Mr. Kennedy:

Q. Mr. Reilly, referring to the point mentioned, that the practice is to retain the bond even where the trustee is discharged from the estate, that is a matter which is discretionary?—A. I suppose it is, I don't know, sir, but I have just adopted what I thought good practice in behalf of the Bankruptcy Court to protect the creditors.

Q. Even where the trustee had completed the distribution of an estate, and having on fyle a bond relating to that estate, makes application for his discharge, and for an order that the bond be delivered up to him?—A. Yes.

Q. Now, that order granting him his discharge, and the order relating to the bond, is made by what official of your Province—by the master?—A. By myself.

Q. Made by yourself?—A. Yes, sir.

Q. If there is no opposition?—A. If there is no opposition. In the course of my experience I think there has never been any opposition.

By Mr. Kennedy:

Q. You have followed the general practice of refusing to have the bond discharged?—A. Refusing to deliver it up.

Q. Does not that mean an additional expense to the estate?—A. No. The practice, I believe, or at least the arrangement of the bonding companies with the trustees is that once an order of release is given that they do not charge any further premiums because they recognize that that bond will not be delivered back to them, but it only covers the period up to the date of discharge for which the trustee was responsible.

Q. Well then, if it only covers that period, of what benefit is it to hold it? —A. Because we have no idea or way of knowing what fraud has been committed during the period which the bond covers.

Q. No such bonds are delivered up in Ontario?—A. No.

By Mr. Jacobs:

Q. You have never tried that out before the Courts—that is, your right to hold it?—A. No, I don't think it has ever been tried out. There have been some people put in a special order; I have given orders authorizing their delivery.

Mr. SPEAKMAN: With your permission, Mr. Chairman, I just wanted to ask whether or not the retention of the bonds has ever been challenged?

The WITNESS: No, it has never been challenged other than that the bonding companies have very often asked for them and after explaining the reason why we wanted them held they took no further objections.

Mr. SPEAKMAN: But they did not have any action in the Courts to force delivery of the bond?

The WITNESS: No.

The CHAIRMAN: Of course, the bond is merely a guarantee that the trustee shall honestly administer.

Mr. SPEAKMAN: Naturally.

The CHAIRMAN: And the bond of itself, in its usual terms, is dissolved when the condition has been fulfilled, and the condition is honest administration. So I am not sure that yielding up the bond would even relieve the company entirely of dishonest administration during the period that it was in effect.

Mr. CARMICHAEL: Mr. Chairman, I would like to ask the witness a question: if fees collected by the Province under the tariff outlined in the Act are in excess of the expenses paid out in salaries to yourself and others, can you give any idea as to how much they are in excess?

The WITNESS: Not very much; they are somewhat in excess. You my girl gets somewhere like $100 a month. Myself and my reporter are the only ones who are paid out of the fees.

Q. That is $5,800?—A. The reporter gets $2,200 or $2,400, or something like that. It would be about $8,000, that would cover the office.

Q. In other words about $12,000?—A. Oh, I would say $12,000 was a little high, I believe it would be somewhere between $10,000 and $11,000.

By the Chairman:

Q. That is at Osgoode Hall?—A. Yes.

Q. And that represents, according to your judgment, about 70 per cent of the total?—A. That is all over Ontario.

Q. All over Ontario?— What about the Official Receiver's office? You said they ran to about $4,000? —A. The Official Receiver at Osgoode Hall collects about $4,000 in stamps that is paid in to the Government, but, of course, he gets his salary which is somewhat smaller, but he does other duties as well.

Q. But can you say what is the total amount of the benefit derived to the Province from the receipts by the Official Receivers?—A. I can't say, sir. I have no way of kowing what it is outside but taking the percentage from the statements that come before me—we all have to charge about the same—I would say that probably $7,000, or $8,000, or $9,000, would be the total fees collected by the official receivers throughout the Province.

Q. $8,000, or $9,000 added to the revenues which are received by the Registrar?—A. Oh, it would be more than that. We can get at it very closely in this way. Last year we had 644 by $18. It would be more than that you see, it would run somewhat around $11,000 collected by the official receivers.

Q. And about $11,000 collected by— —A. By my own office.

Q. So, then, the total coming to the Province is approximately $22,000?—A. Some where around that.

Q. Am I correct in assuming that the Province has availed itself of section 162 of the Act in which it is stated in the 6th subsection, that the fees payable to the officers of the Court shall belong to the Crown in the right of the Province but the Lieutenant Governor in Council may allow the same in whole or in part to such officers?—A. They are taken by the Province.

By Mr. Jacobs:

Q. Can you tell us, Mr. Reilly, what fees, if any, are paid to the Federal authorities?—A. None.

Q. None whatever?—A. Nothing.

Q. The tie is a purely sentimental one?—A. Entirely.

The CHAIRMAN: Are there any other questions to be put to the witness?

Mr. KENNEDY: Mr. Reilly, if you have the Act there will you refer to section 86, subsection 5, Discharge of Trustee. Under the provisions of this section the discharge of a trustee shall act as a release of the security provided pursuant to subsection 1 of section 36 of this Act—does not that affect your security? I am referring to the Bankruptcy Act, section 86, subsection 5 which provides that the discharge of a trustee under the provisions of this section shall operate as a release of the securities—what does that mean?

The WITNESS: What it means I am not going to say. What I do say is that the order I give is exactly in the terms of that section. I release the bond, but hold it if it serves any purpose.

Mr. JACOBS: You make the law yourself—it satisfies you?

The CHAIRMAN: I would suggest, Mr. Jacobs, that I think the witness can find more justification for his conduct in the next sub-section which says:

> Nothing in or done under authority of this section shall relieve or discharge or be deemed to relieve or discharge a trustee from the results of fraud or any fraudulent breach of trust.

Mr. SPEAKMAN: It seems to me that has no application, the trustees would still remain liable as to bond.

The CHAIRMAN: Yes, the bond is subsidiary to the obligation of the trustee.

Mr. JACOBS: Certainly. The trustee would remain liable personally and the bonding company—it is a question of their release.

The WITNESS: Well then, in that case, gentlemen, I retain the bond for what benefit it may be if we ever need to use it.

Mr. JACOBS: It is a nice academic question.

The WITNESS: It is a nice academic question.

The CHAIRMAN: Are there any other questions you would like to ask the witness, gentlemen?

By Mr. Macdonald:

Q. Have you any knowledge about the other Provinces, Mr. Reilly, about the custom there, regarding the payment of stamps or fees?—A. I know nothing of that, sir.

Q. You know nothing at all. Do I understand you to say that you are the sole Registrar for the Province of Ontario?—A. Yes, sir.

Q. Well, all assignments aren't made to you?—A. Assignments are filed with the Official Receivers.

Q. And they carry on along right through?—A. Oh, no, they only carry on until the first meeting of the creditors is held and the trustee's bond is filed. That ends the Official Receiver's duties.

Q. Then you come in?—A. Then I come into the picture in all the estates, or even before that if the assignment is filed and they want to carry on business, they must come to me.

Q. The practice in our province is to have a registrar in every county, I suppose that does not apply here though. One question that arose here before the Committee was the question of trustee, the question of a dishonest trustee, and the question of a licensed trustee; and the opinion of the Committee was that possibly a licensed trustee, appointed by the Government, would in part relieve that danger. What do you say about that?—A. It is a very debatable point in my mind, the advantage of a licensed trustee. Perhaps the superintendent, if he had some authority under the Act, for instance, to go into the trustee's office and ask to see his trust account, check up on him if complaints were made, might be of some use. But as I find it—I think I have a very effective check myself which I do not hesitate to use if I find a trustee doing something which, in my opinion, he should not do; if he has not wound up an estate and complaints are made I positively refuse to appoint him custodian in any other estate and, rightly or wrongly, I have told the Official Receiver that, even when asked, he is not to accept a nomination from the creditors of such a person, although that may be outside of the Act.

Q. Does not that force him to act quickly in closing up an estate; is he not rather under a threat that if he dosen't he won't get another?—A. That is one of the chief difficulties that I find in the Act now. No matter what the trustee may do in his administration, the Court as such is not expected, being a judicial body, to keep its fingers on A, B, C, and D—on trustees to see that they do their duty.

Q. That is, in the interest of the creditors?—A. Of course. There is a long story concerned there about the interest of the creditor which could be told and I think it is rather pathetic.

Q. Getting back to this question of the licensed trustee, Mr. Reilly, do you think that, or do you not think, that the appointment of a licensed trustee would go far to do away with the necessity of solicitors' fees, which in many cases are very high—that the licensed trustee should be competent to do all the work that is now paid for?—A. In the Province of Ontario I think it would make but very little difference. A great many of the trustees there are men who have been in business since before I was a boy and are very, very prominent. They know the Act, but these questions come up in every estate which necessitates the use of a solicitor. For instance, the trustee to appear before me on a motion must come through the solicitor, and so on. I don't think that could be helped. But the one thing about a licensed trustee, gentlemen, and I would like you to keep this very much in mind, is that one of the things that

I have tried to do in Ontario is to keep the cost of administration at a minimum, and licensed trustees will mean that it will be only those who are looking for business, as it were, who will want to be appointed. If there is much expense in securing a bond there may be some of these in local places that wind up little estates very satisfactorily: from my point of view, well, it just means that they won't bother. And I would suggest very strongly that there should be some provision in the Act giving the court the authority in its discretion, where necessary for the benefit and interest of the creditors, to appoint some one at some little out-of-the-way place here and there to wind up the estate. Often times, for instance, I have used the local bank managers in the local four corners, and probably the local justice of the peace, and men of that type. They don't have much experience in bankruptcy, perhaps, but with a little help by a solicitor they can bring in their accounts: they know how to do their duty, they get their accounts in, they get them fast, the estate is wound up cheaply, whereas if a licensed trustee is appointed in every case and he has to travel 200 to 300 miles to take a look at things and make an inventory and all that sort of thing, you are going to saddle too much expense on the small estates.

Q. You say a solicitor is necessary to appear before you—why? Why can't the trustee appear before you and pass his account?—A. He can, to pass his account, but he cannot on motions.

Q. Why can't you hear motions; that trustee is the interested party, it is just the same as having him go into the court himself?

Mr. JACOBS: You have to go before the Court.

The CHAIRMAN: You mean that the trustee can appear before you in certain parts of the case, but not in the capacity of attorney.

By the Chairman:

Q. Have you in your jurisdiction many cases, or rather many estates in suspense? We have, if my information is correct, a great many estates which like Mohammed's tomb, I believe, are suspended between solvency and insolvency and even through generations—I can't say generations, but for some time.—A. How do you mean, sir? After the assignment or receiving order was made?

Q. After the assignment, or after the receiving order, or sometimes after all the money in the estate has disappeared?

Mr. JACOBS: It is convenient to make a full statement and to be discharged as a trustee?—A. I don't think that we have much difficulty with that in Ontario. There may be cases in which the trustee may be reluctant to get his discharge. Here is a thing that is very unfair, gentlemen, and it is that in the small estates the Act requires, under penalty—he comes to get his discharge and he has no assets, and he has to pay that money out of his own pocket. That is not fair. For instance, the trustee taking the bad with the good comes into the picture of a large store with a big stock; it looks to be quite a big business proposition, merchandising, and after he gets into the picture he finds a chattel mortgage, he find a few months' rent due (in our Province it is limited to six months), two or three years' taxes due—with the result that when it gets down to him he has a tremendous lot of work and he hasn't got one cent for it. I do not know just how you figure it, but it is decidedly unfair for the man, I think he is entitled to a fair payment for what he tries to do.

Mr. CARMICHAEL: Well, there is the other side of the case, I think. The only criticism I have heard of the Act is the high cost to the estate before it is finally wound up. I had recently an instance cited to me that the liquidator's charges, if I can quote them now from memory, were some $30,000 to $35,000, the solicitor's costs almost as much, and the amount of cash left to disburse in this instance was between $1,200 and $1,400.

Mr. SPEAKMAN: Mr. Butcher put a case on the record the other day which was another such case as that.

Mr. CARMICHAEL: Perhaps it was the same as this case I refer to which was sent to me by a solicitor in my own constituency. These charges he said were more than unduly high, even though he was a solicitor himself he protested against the high charges and wanted to have them stopped. I was wondering, Mr. Reilly, if you had anything to say in connection with that point?

The WITNESS: I could say a good deal perhaps. When accounts are brought in, and while it is not done in every case, it is becoming a practice with the trustee before they send out the dividend sheet they have their accounts before me and have their fee taxed to evade the expense of having to send out two dividend sheets. I have not hesitated to order them to pay the extra dividend, it may only be one-half of one per cent, out of their own pocket, and that has perhaps made a great deal of the difficulty.

Mr. SPEAKMAN: It would have a salutary effect.

The WITNESS: It would have a salutary effect. The practice of many of them is to come in and get their fee taxed, and also to compel all solicitors to tax their bills.

The CHAIRMAN: Have you any suggestions to make with regard to the sections of the Act which enable farmers to make voluntary assignments?

The WITNESS: So far as I know, in the Province of Ontario we have no difficulties of that sort at all, the percentage of farmers is so very, very small, as a matter of fact, I don't know whether—

The CHAIRMAN: You don't mean that the percentage of farmers is small, but the percentage that avail themselves of the Act.

The WITNESS: The percentage who avail themselves of the Act is very, very small. As a matter of fact I do not know but that maybe Mr. Elliott could explain, most of them come from up around his section, from around that part of the country.

Mr. JACOBS: You say the bankrupts come from Mr. Elliott's section of the country?

The WITNESS: The assignments from farmers which I have noticed and thought it a strange feature—78 per cent of them come from up in that section.

By Mr. Elliott:

Q. Are they administered from Toronto?—A. No, sir, I think most of them are administered by John Stevenson from Stratford.

Q. I fancy you are getting a little off in your geography.—A. Well Middlesex would be administered from London, Stevenson does not administer any in Middlesex.

Q. I was wanting to ask you this, having regard to the farmer's estate, do you think it is feasible at all for farmers' estates as a general rule to be administered under a trustee, frequently a man in town who knows nothing, or very little, about the values of the assets of a farmer who goes bankrupt, and he is himself 25 miles away from the one assigning, perhaps 40?—A. I guess I can't say as to that; I can only speak of what I see when the accounts come in to my office and I never had any objection. As a matter of fact not long ago I had one of the debtors who was a farmer come into the office with the trustee, he was Mr. Roberts of the Trust & Guarantee Company of Brantford, and he said, "Well I want to commend Mr. Roberts on the splendid way he has handled by estate." I have not had any particular objections of that sort, and I do not see any reason so far as I know, why farmers should not be enabled to avail themselves of the Act if they want to.

Mr. SPEAKMAN: Exactly.

By Mr. Elliott:

Q. Don't you think there should be some special provision in the wording of the law in these small estates—they are small estates—once the farmer gets into bankruptcy in aiding them to have the estate administered just as the estate of an intestate is administered, or more nearly so, or without the intervention of a regular custodian?—A. It is not done in Ontario.

Q. I have in mind the case of a farmer who wanted to make an assignment a short time ago and he wanted to make it to somebody in the vicinity of the property, and when he came in and found out he could only make it to some person who was authorized to take assignments.

The CHAIRMAN: That is a misinterpretation of the Act.

By Mr. Elliott:

Q. It may be, but of course there is a discretion as to whom you may appoint.—A. Not altogether, Mr. Elliott, I know of a case only this past week in which the trustee was the next-door neighbour of the farmer, and with the assistance of a local solicitor, and at a very reasonable cost, he seemed to have got along and done the work fairly well.

Q. He was not a regular—A. He was not a regular trustee.

Q. Don't you think that is the reasonable thing to do in most of these cases?—A. That is, to a large extent. The chief objection, if any, that I would have to limiting it to licensed trustees alone—just isolated cases like that where little estates of farmers and so on can be handled. The papers come into my office sometimes in an awful shape, but you get substantially the correct picture of the thing, we don't stand on too much technicality so long as all the detail is honestly done.

By the Chairman:

Q. One of the witnesses we have had here has recommended very insistently that all officers administering the Act should be directly responsible to Federal authority, the purpose being to have it centralized and direct; Have you any comments to make on that suggestion?—A. That undoubtedly creates a very difficult question of jurisdiction. Under the Act you place the administration under the Provincial Court and I don't know how you can deny the Provincial Court the right of having its own officers act in its own Court, and how the Dominion can check on it.

Hon. Mr. ELLIOTT: You have a conflict of authority there at once.

The WITNESS: You have a conflict of authority there. It may be you could divide the Registrar's duties into judicial and administrative; and that there might be some way of working it out so far as administrative duties are concerned. But you cannot appoint any superintendent to go into the Registrar's office acting as a court and say: You must not do this, or you must do that.

The CHAIRMAN: Well, gentlemen, are there any other questions?

Hon. Mr. ELLIOTT: I don't know whether you can give me this information or not, could you give the Committee an idea roughly of the value of the estates which go through your office in a year?—

The WITNESS: I had a card on my desk by Dunn's which I thought was in my bag and I find it is not, but it would—

The CHAIRMAN: I will see if I can help you, Mr. Reilly. The Dominion Statistician has told us that dividend sheets for 1931 yielded total receipts of $10,522,604. I must qualify this statement by saying that the amount given is a minimum, because it only represents dividend sheets examined by the Statistic-

ian's officers. It may be that there are some dividend sheets which were not turned in, and it is possible that there were some that were not examined. Now, in the year 1931, there was in all Canada 3,223 bankruptcies, of which 2,595 were initiated by assignments and 618 receiving orders. In the Province of Ontario there were 835 bankruptcies, 650 of which were initiated by assignments and 185 by receiving orders. Of course, the number for Quebec is greater.

Hon. Mr. ELLIOTT: Pardon me, Mr. Chairman, the point I was wanting to get at was the amount of assets that would go into the hands of the various trustees, and the amount that had gone, actually gone, to the creditors of the various insolvents.

The CHAIRMAN: Well, from the information I have, I am unable to answer that question directly, but if you take the total number of bankruptcies in Canada as 3,213, and the number in Ontario as 835, it will be seen that about 25 per cent of the bankruptcies take place in Ontario.

Mr. ELLIOTT: That is right.

The CHAIRMAN: And 25 per cent of $10,500,000 is something over $2,500,000, but I suggest that the amount involved in Ontario bankruptcies may probably be higher than it would be for the whole of Canada. When I say the amount involved was an average amount I mean that it would be higher than for the whole of Canada because undoubtedly some of the larger bankruptcies have taken place in the commercial and industrial centres of Ontario and Quebec.

Mr. ELLIOTT: The point I was trying to get at was whether or not the witness can tell us about the proportion of assets that were actually realized upon and went to the creditors.

The CHAIRMAN: Personally I have not the information. You have no figures to show that, have you Mr. Reilly?

The WITNESS: I have no definite figures, of course, on that; that would be a matter of compiling statistics. But I would think that, generally speaking, when I just think of the estates as they pass through my hands, that 10 to 15 per cent would be probably a reasonable percentage on the average for costs of administration, it might be 15 per cent. Of course, in small estates it is going to run up very high because of these initial costs of advertising in the estate of less than $1,000 which is exactly the same as that in the hundred thousand dollar estate; in some respects this costs no more than the thousand dollar estate, so that in the small estate, all assets are eaten up in necessary disbursements.

The CHAIRMAN: Your estimate is that about 10 to 15 per cent of the money that actually comes in goes for costs?

The WITNESS: I would say about 15 per cent; of course, in some cases where there is a lot of litigation it is bound to be more.

By Hon. Mr. Elliott:

Q. Can you give us an idea—do you mean to say then that in your experience about 10 to 15 per cent of the money that is actually realized, goes to the creditors?—A. I would say so. I would say about 15 per cent, is about a fair estimate of the amount.

Q. That would leave about 85 per cent for the creditors.—A. Well, not of the total assets, I am speaking of the 15 per cent—He says 25 per cent is Ontario; you would not have as much as that, Mr. Elliott.

Q. According to the evidence that we have had here before, what, in your experience, would be the average percentage?—A. Of the dividend sheet?

The CHAIRMAN: Of the realizable assets.

By Hon. Mr. Elliott:

Q. The percentage of the realizable assets which have gone actually to the creditors.—A. I would say an average of about—it is pretty hard to get it entirely. It depends upon the viewpoint you take of it. I would not like to answer, Mr. Elliott.

Q. Would there be much difficulty when you are in your office in getting that estimate?—A. It would be practically impossible. All I could do would be to take half a dozen, or a certain number of fyles, and look through and give you some figures from that. It would be an impossible thing to do, and I haven't got the staff.

Mr. MACDONALD: Do mercantile agencies compile statistics of that kind?

The WITNESS: What I was trying to get at is this, the mercantile agencies would tell you that about 25 per cent is realized from the gross assets of an estate. What I was trying to tell you is that, in my opinion, 10 to 15 per cent of that 25 per cent would cover the cost of administration.

Mr. KENNEDY: You don't mean 10 per cent of it, you mean two and a half per cent.

The WITNESS: Yes, two—to three-fifths of the 25 per cent gross realization.

Mr. KENNEDY: Goes as costs?

The CHAIRMAN: You have said, if I understand you correctly, Mr. Reilly, that 10 to 15 per cent of the realizable assets go to the cost of administration. You have an estate in which the liabilities are $10,000; the assets realized upon, amount to $2,500; it is your experience, if I have correctly understood your evidence, that from 10 to 15 per cent of the $2,500 would be the cost of the administration.

The WITNESS: Somewhere around that. I might be a little low, I don't know. The small estates will run—

The CHAIRMAN: Will run higher.

The WITNESS: Run higher proportionately. The small estate would be around $300 to $400, depending upon the cost of taking the inventory; and others, of course, much larger.

By Mr. Kennedy:

Q. Suppose there is a realization in, say, cash $10,000; then your estimate is that from $1,000 to $1,500 would be absorbed in costs, and $9,000 to $8,500 would be paid out in dividends?—A. Yes, providing there was not some particular circumstance of litigation and so on.

Q. Would you mind just a moment referring to a matter which arose earlier in your evidence, that is the matter of the cost, or the remuneration of trustees in small estates. For purposes of discussion, let us assume that $2,000 or under is a small estate. Suggestions have been submitted, I believe, on behalf of the Bankruptcy Committee of the Canadian Bar Association that in these small estates a five per cent commission does not remunerate the trustee, and it has been suggested that a minimum fee for remuneration be allowed in small estates. Have you formed any view as to the desirability of that practice?—A. I find that dealt with there in section 85, sub-section 4, in which:

> The remuneration of the trustee for all services shall not under any circumstances exceed five per cent of the cash receipts, except with the approval in writing of the inspectors and of the court.

I do all the time— trustees come in, in these small estates, where I know they have done a lot of work—, with the approval of the inspectors, I do raise their fees.

Mr. ELLIOTT: To how high a per cent?

The WITNESS: Oh, a reasonable amount— 10 per cent sometimes, sometimes a little bit more, but not with the idea of setting up adequate remuneration, but rather just getting somewhere near something like reasonable compensation for what they do, making it as nearly a minimum as you can. But take some of these expenses of $2,000, it is impossible for the trustee to give his time and trouble for what he is obliged to do—

Mr. KENNEDY: That application is made by you, not the trustee?

The WITNESS: By the trustee who comes in himself and tells me what he has done, and so on. In most cases I know all the facts because they have been before the court.

Mr. KENNEDY: Is it your experience that in Ontario there are any considerable number of these estates that are handled by trustees?

The WITNESS: Oh, yes, a very large percentage of them are small estates, the majority of them were under $2,000.

By the Chairman:

Q. You have stated, Mr. Reilly, that some commercial agencies have estimated that the amount recovered is, roughly, 25 per cent of the total liabilities?—A. No, of the total assets,— the gross realization of the assets is 25 per cent.

Q. Will you explain that? Do you mean that if the assets are estimated to be worth $1,000 that the realization will give $250?—A. Not altogether, I mean it in this way. The trustee steps into the picture only to find the secured creditors who come first, and all that sort of thing; liens of one kind or another, — and I am speaking in a general way, that after the secured creditors have been looked after in all estates 25 per cent is about the percentage that is realized, available for distribution among creditors and the payment of costs.

Q. Among ordinary creditors?—A. Yes.

By Mr. Kennedy:

Q. You mean that in the average case for the ordinary creditors there is about enough monies available, 25 per cent, to pay the costs and the balance on account?—A. Yes.

Q. In other words, if I had a claim for about $1,000, as an unsecured creditor, you have found in the average case there is after secured creditors are taken care of, about 25 per cent.—A. Yes, after the secured creditors are taken care of there is about 25 per cent.

The CHAIRMAN: 25 per cent of the realizable assets?

Mr. KENNEDY: 25 per cent of the creditors' claims.

The WITNESS: Oh, no.

The CHAIRMAN: That is what I am trying to get clear. I have seen somewhere that the total liabilities of bankrupts in Canada exceeded last year $100,000,000. We have here the statement of the Dominion Statistician, with the qualifications I made a moment ago, that dividend sheets show a distribution of $10,500,000, which indicates that creditors last year lost about 90 per cent of their credit.

The WITNESS: May I put it this way, sir, and I have looked into these figures carefully, last year there were some $52,000,000 odd of liabilities. The assets after being sold realized about $13,000,000, 25 per cent. Now, you take your costs out of that which probably would run three of four millions, probably three millions, leaving $10,000,000 possibly of the $52,000,000. It is pretty close to what the creditors got.

Mr. ELLIOTT: That is just the view of the Chairman.

The CHAIRMAN: Yes, and I can't even give the source of my information. I have seen it somewhere. Many misstatements are made concerning these questions— that $100,000,000 in liabilities went through the bankruptcy court last year.

The WITNESS: Mr. Chairman, I have a card on my desk which I received from the R. G. Dunn Company, I thought I had it in my bag. If it would be useful to you— it showed total liabilities of something over $52,000,000 last year across Canada.

Mr. KENNEDY: That is secured or unsecured?

The WITNESS: That is, after secured is taken off and the assets realized, there is about $13,000,000 left, available for the ordinary creditors after payment of disbursements.

By the Chairman:

Q. Mr. Varcoe tells me that he has a return by the Dominion Statistician on this point and if the Committee thinks well of it we will have it fyled as an exhibit to form a part of this evidence.—A. With all due respect, I think that the report of the R. G. Dunn Company will be a whole lot more reliable than that of the Dominion Statistician.

Q. Will you send us that report that we may have the benefit of that as well?—A. Yes, because they have kept a very close tab on this thing, probably closer than anybody else because that is their particular business. I am told by one of their employees that he has compiled it for a number of years back and finds that it runs very close to 25 per cent.

Q. Will you send that statement to the Secretary of the Committee?—A. Yes sir.

Mr. CARMICHAEL: I have just one question I would like to ask the witness. It is with regard to a reference which was given here last week with regard to farmers of Quebec Province that were unduly solicited to go into bankruptcy and, as a result, their credit was impaired—Have you any information as to the situation along that line in Ontario?

The WITNESS: I have never heard anything along that line suggested in Ontario at all. I can scarcely see how that would be so for the reason that if the farmer is insolvent his condition is such that I don't think his credit can be hurt very much.

By Mr. Speakman:

Q. No, the trustee would be very much out of it.—A. That is a different proposition, sir, if you are going to permit trustees to do that.

Q. There is just one question I would like to ask, that is in reference to the retention of the bond after the retirement of the trustee. Have you any instance in your mind where you have collected on such a bond if it is retained after the discharge of the trustee? I am just wondering whether the retention of the bond was a mere formality or whether it was actually— —A. I don't know whether we have. I know we have collected on a lot of bonds before that.

Q. Oh, yes, but I am speaking about collection after the retention of a bond?—A. I don't know that I have, but just as a little bit of caution I have held on to it, whether it did any good or not I don't know.

Q. What is your view with regard to the preferred creditors—is there any way of getting over that? The debtor may assign and you may think he is in fairly good shape to pay 40 cents on the dollar, then in some way there is a lien put on the place. I have in mind a case where the landlord was a friend of the debtor and he went in for six or eight months rent, and the municipality was in for taxes, and so on. Do you think they should share with the creditors

in cases of that kind? Would you limit the number of years with regard to taxes and these liens?—A. I have very decided views on this point. There have been cases which have come up in my practice in which it has been almost pathetic to see the assets eaten up by Government departments and municipal taxes, and so on.

Mr. FRASER: It is charges such as these which eat up all the assets and then the creditors get what is left. Will you give us your views as to what you think about that?

The WITNESS: Well, here is the situation: you have the Federal trustees tax and the sales tax and the Provincial Workmen's Compensation Board, and the Corporation Tax, rental claims and so on, and municipal taxes—you have the income, and business tax, and then you have got rent, wages, costs, and first execution of creditors, then the disbursements, and then the creditors get what is left.

It has been said that it would be an infringement of the rights of the provinces in regard to limiting the amount of arrears that they could collect for provincial and municipal purposes, but I think this would make a good test in the Supreme Court, to say to the provinces and others, Well you will have to collect your tax or just get one year and I think that is all you are entitled to.

By Mr. Jacobs:

Q. Well, many of these cases have gone to the Supreme Court of Canada and to the Privy Council, the highest court of the Empire, and the provinces have all been declared to be correct in their view.—A. I don't think that point has ever been taken up, Mr. Jacobs.

Q. We have special legislation. 1923 I think it was, declaring that, under our former Act, what were considered priority claims, etc., shall be considered so under the Bankruptcy Act, so that we have more preferred claims under the Bankruptcy Act than you had in Ontario?—A. believe you have, sir.

Mr. ELLIOTT: Do you mean one year prior to bankruptcy proceedings?

The WITNESS: One year's arrears.

By Mr. Jacobs:

Q. That is, arrears prior to proceedings? Some of these cases last two or three years. You would not suggest that no taxes be collected during that time?—A. Ordinary arrears in taxes collectable then.

Q. On the realizable assets.—A. Well it would be on the realization, of course, you can't avoid that. But once the trustee steps into the picture it is an alienation which prevents the taxes running again. But I cannot see why there is not sufficient authority in the Dominion Parliament to add to section 121 which says that, no matter who he may be, as a matter of distribution of insolvent assets you shall only be entitled to give so much, so much, and so much—as the case may be.

Mr. VARCOE: That is one of the amendments I think, Mr. Chairman. I think it is one of the features of the Act.

The CHAIRMAN: If there are no other questions, I will ask Mr. Delisle to come to the stand.

The WITNESS: Might I say, gentlemen, before I retire—I don't want to take up too much of your time—but I might say I have read the Bill and I may say frankly that I do not very much agree with it for the reason that you are all looking from the outside in, while I see this thing from the inside out. I find that there are so many complaints due to inconsistencies in the Act that in my opinion if you want to improve it, you have got to get someone who

knows the inside workings of the Act to review it from every angle. You have been trying to put a Cadillac body on a chassis of the old Ford assignment act or vice versa, I don't know which, but with the result that you have so many inconsistencies, so many difficulties I have to contend with from day to day, there are so many features of this kind to the Act, that fully half my time is spent trying to help solicitors out of difficulties like that.

Mr. JACOBS: We had to try to satisfy nine provinces when this Bill was introduced.

The WITNESS: It is not so much the difference between provinces as it is the features of the Act. It is rather a pity, gentlemen, in my opinion, that the Act cannot be revamped from start to finish, to make it what it could be made, and what it should be made.

There is no reason why it should not. You are all, or most all of you lawyers, and you like to see clear, definite legislation in the matter. Take the matter of the little estate, the custodian steps in and takes over the assets; there is not much but there may be a little. There is not enough for the trustee to step into the picture. If any of you, as lawyers, can tell me what can be done under this Act to keep that custodian out of the mess, or anybody else, I do not know—but what we are doing day after day, without any authority, are authorizing that custodian to sell the assets, pay his own disbursements, and let the thing go.

Mr. JACOBS: That was understood from the Quebec Law, the law regarding custodians, somewhere after the Act was finally put through.

The WITNESS: These are things which do not mean much possibly except to those who are familiar with the inside workings of the Act. I am sure that Mr. DeLisle will support me very, very strongly in regard to these measures, gentlemen. There are a great many other things I would be glad to mention, but I have taken up, I am sure, too much of your time. But these features that I would like to see considered—if it can be done there would be some means made of checking dishonesty. And now, you will appreciate as well as I do that after 12 years of the Bankruptcy Act there is as much, if not more, dishonesty rampant to-day as there was twelve years ago, and that surely requires some solution which does not appear anywhere in the Act as yet. How we are going to get it will be a matter to be taken up, but that is a thing that has to be considered.

Mr. MACDONALD: You would not say that the Bankruptcy Act affords opportunity for dishonest creditors to take advantage and get clear of their debts?

The WITNESS: That is just about the best that you can say for it.

The CHAIRMAN: Would you suggest that there might be an amendment of some other Act that would improve commercial practice in that respect?

The WITNESS: That would be a difficult thing to secure. What I would like to see is more teeth in the Act so that we could get at these fellows, the fellow who to-day makes a statement that he has $20,000 surplus assets, and who within a year comes in to the Bankruptcy Court and shows a deficit of $20,000. Let him explain where it goes when he gets up before the County Court. My suggestion is that you will never clean up this situation until you get such jurisdiction that he can be brought before the Court and sentenced by the Bankruptcy Judge.

The CHAIRMAN: I would suggest that you look at the suggested amendments which appear at page 23 of the first day's hearing with regard to sections 195 and 202. You will find that they have much in common with what you are suggesting.

The WITNESS: These are some of the things which I would like to see done, gentlemen. I do not think they would do any harm to the debtors at all and when it is a mere moral jurisdiction they can paddle along and they can get away with their assets—for there is always some way in which they can wiggle out of it.

Mr. JACOBS: Will you suggest that the Registrar be clothed with the authority to send a person to jail?

The WITNESS: He may be brought before the Registrar for commital before the Bankruptcy Judge, a Supreme Court Judge, and let him be dealt with there. And if you do that, gentlemen, I venture to say that inside of one year the Province of Ontario will put an end to 75 per cent of all the crookedness that is going on.

Mr. ARTHUR DELISLE, called.

Mr. JACOBS: You have the right to talk your own language, or you may speak in English, whichever you like, Mr. Delisle.

The WITNESS: I talk English and I will use that language if it will be easier for the Committee members, but you will have to excuse any little errors on my part.

By the Chairman:

Q. Mr. Delisle, you are the Registrar of the Bankruptcy Court which has its place of business in Montreal?—A. Yes sir.

Q. How long have you filled that office?—A. Well, I have only been Registrar since the coming into force of the law. I was Deputy Registrar just a few months and then appointed Registrar, the man who was appointed being ill. Since then I have always administered the Bankruptcy law.

Q. There has been some criticism of the administration of the law and one of the points on which it has centered has been the cost to the creditors of administration. Have you any information concerning the revenue to the Province of Quebec from the administration of the Act?—A. Well, I might say, that for the last four or five years the revenues of the Province of Quebec have been between $30,000 and $35,000. Of that about $10,000—I do not say that it is $10,000 exactly—have been paid for the employees. That would leave a large amount to the Province.

Q. How is this payment to employees made, as salary?—A. It is made as salary paid by the Province of Quebec, some small salary.

Q. As the Official Receiver you have no salary?—A. The Official Receiver is appointed by the Federal government and his fees are governed by the Act. The Official Receiver is not an employee of the Provincial Government. I am, though, as the Registrar; but I must say that I have the two positions. I was the chief of the office at a certain time and I continue to be the chief of the office, and they appointed me a registrar. I have since then acted as Registrar, but with many other services to render besides my duties.

Q. Does the Official Receiver receive any remuneration or stipend from bankruptcies?—A. The Official Receiver receives $16.40 in each bankruptcy, of this about $3.40 are in stamps going to the Province on proceedings—stamps on forms and some of the other documents, and the balance is his fee, that is about $13. I suppose it is the same thing in all the provinces; it must be the same thing. The fees of the Official Receiver are fees by necessity, by the tariff; and it gives him about $13 per bankruptcy.

Q. Any fees apart from the amounts that are paid for stamps?—A. Of course. The stamps are taxed by the Official Receiver General on assignment,

and then the stamps on the forms which comes to about $3 or $3.40; something like that.

Q. What is the total amount paid to the official receiver on an ordinary—? —A. $16.40 in each case.

Q. And about $3 of that goes to the Province?—A. About $3 of that goes to the Province.

Q. And the rest remains with the Official Receiver?—A. Well, that is his fee.

Q. That is his fee?—A. Yes.

Q. Then, as Registrar, you receive a salary?—A. I receive a salary of $1,500.

Q. $1,500 or $1,600?—A. $1,600.

Q. Then you receive a salary as prothonotary?—A. Of $1,600 as chief of the office—as a provincial employee.

Q. Then above the aggregate salary of $3,200, you receive fees from each bankruptcy on each proceeding?—A. Well, I receive fees—no, I cannot say that. I receive fees in this way: According to the Act the drawing up of a judgment should be made by a lawyer as they are made in all the English provinces, but in Quebec Province they are not accustomed to that and I am obliged to draw up all the judgments which I render in a bankruptcy; more than that, all the judgments which are rendered under the winding-up Act which I should have nothing to do with—I should not have anything to do with that as it comes under the care of the ordinary court.

Q. Well, let us take an ordinary petition in bankruptcy.—A. Yes.

Q. Which is taken to your office.—A. Yes.

Q. What disbursements are exacted on that petition?—A. The statutory fee of $2 for the petition, 20 cents for the affidavit and each of the other documents, and then $2 for the order which is affixed by stamps. I charge $3 for the drawing up of judgments. This is the fee which appears in the statute for the drawing up of judgments. But I must say that this method is less expensive than it is in the other provinces, because you avoid the services of the other attorney in order to go before a judge and have a judgment approved—that is $2. The lawyer does not work for nothing. He would charge for the application to the court. So, I am under the impression that the three-dollar charge in Quebec is less expensive than in all of the other provinces.

Q. Yes; but on the petition there is a stamp affixed of $2.—A. $2, yes.

Q. On the order, which is the judgment on a petition, there is another stamp of $1.—A. $1 on what?

Q. On the order.—A. That is the usual stamp on the proceedings—according to the number of words, and all that.

Q. Yes, and then there is the twenty-cent stamp to which you have referred? —A. Yes.

Q. And there is a three-dollar cash payment which goes to you?—A. Yes.

Q. Now let us take the discharge of a trustee fees are exacted on a proceeding of that type?—A. On discharge of a trustee the costs are either $18.40 or $18.80—say $18.40, that is when there is a compromise, or something like that. The trustee alleges that a compromise was executed and then there is no inquiry by me and I charge $14.80; on others I charge $18.40. I must say, on that point, that, owing to the small salary I receive, and the imposition upon me of the drawing up of all these judgments, and holding inquiries, and all that—I submitted to the Bar (the Bar Association of Montreal) the whole question, and they were satisfied, and the Chief Justice gave me in writing an authorization to charge what I charge.

Q. Have you that in writing?—A. No, I haven't it with me.

Q. Can you send a copy of it to the Secretary?—A. Surely, yes.

Q. To form a part of your testimony?—A. Yes.

Q. Well then, the disbursement being $14.40 when a discharge comes to you as the result of a compromise, and $18.80 when it comes about as a result of a dividend, the amount which goes to the Province in stamps is about what? —A. $7.80.

Q. And the balance $6.60, or $11, goes to you in cash?—A. Yes, to help me to pay the expenses of having stenographers and buying machines to do the work, and everything like that. The Government does not give me anything of the kind, I have to pay for them.

Q. In fact, most of this work is done by yourself with the aid of a stenographer?—A. I do not take any stenographer only when I have an inquiry to make as we are forced to hear the debtor—instead of employing a stenographer, I just do it myself, I do it in my own writing—long hand writing. I avoid the cost of a stenographer.

Q. On a composition what charges are exacted by your office?—A. On a composition, $22.

Q. Or $25?—A. No, never $25, on a composition, $22.

Q. Never $25?—A. No, not on a composition. On the discharge of the debtor, I charge $25.

Q. Oh, I see. Well, of that $22 what proportion, is represented by stamps? —A. $9.

Q. And that goes to the Province?—A. That goes to the Province.

Q. And the remaining $13 goes to you in cash?—A. Goes to me in order to help me pay the expenses.

Q. On a discharge the fee, or at least the amount exacted is $25?—A. Yes.

Q. That is on the discharge of the debtor?—A. Debtor. In Quebec we don't exact the presence of a lawyer to present these petitions; and the same thing on the compromise—$22. This is about all that it costs; there are no lawyers' costs, nor for the discharge.

Q. Well, they are frequently presented by lawyers?—A. Very seldom.

Q. When they do present them they are entitled to the tariff?—A. To a fee.

Q. To a fee?—A. Yes.

Q. So to that extent the fees are duplicated?—A. What do you mean?

Q. Well, the disbursements exacted by your office on the discharge of a debtor is $25, I have understood you to say. That is correct isn't it?—A. Yes.

Q. And $9 is represented by stamps?—A. Yes.

Q. Would $14 go to you in cash?—A. Yes.

Q. And this $14 you have explained you claim under that portion of the Act, or the tariff of the Act, which regulates the fees of lawyers?—A. Well, we allow the trustee to present that petition for compromise, and the debtor to present himself on petition for discharge, and there are no lawyers—there are not ten cases out of a hundred where a lawyer acts in these matters.

Mr. JACOBS: That is where it is not contested.

By the Chairman:

Q. Then when they are—?—A. Sometimes they are, if they are contested, there are lawyers who would appear before the judge.

Q. Yes, but when they are contested, there is no reduction in fee on the discharge?—A. No, there is no reduction, because of that compromise and judgment which shall be made by and on the stenographer's notes taken at the outset of the case.

Q. Yes, so that when they are contested, or when they are not contested, and the petition is presented by a lawyer both he and you get, or receive fees?— A. Well, I receive the fee which I told you a moment ago.

Q. So he receives the fees which he should receive as tax under the tariff?— A. When we come to tax we consider that in the taxation.

Q. Yes, but if he has presented a petition on which he is entitled to a fee of $14.——he is entitled to that fee under the tariff, is he not?—A. Yes, of course.

Q. And in these cases the disbursements made in your office are the same as if the petition was presented to you as Registrar?—A. It is always presented to me, as a question of fact. It is always presented to the Registrar, it is only when it is contested that I send a case to a judge.

Q. Yes?—A. On all the contested petitions——cases in which the Registrar has no jurisdiction——such cases which are supposed to be heard in Chambers.

Q. There is the advertising which has to be done under the various sections? —A. Yes.

Q. And your charge for that advertising includes—and I may say that my question merely arises out of information that has been given to the Committee—a commission of about 33⅓ per cent to you?—A. 33⅓ per cent—what is that?

Q. Yes, when advertising is done under the Act the newspaper renders an account.—A. They give a commission.

Q. To the bankrupt estate?—A. They give us the ordinary commission they would give to lawyers, trustees or anybody else.

Q. And the ordinary commission is 33⅓ per cent?—A. Oh, it is not always that.

Q. What is it then?—A. About 25 per cent.

Q. Or 33 per cent?—A. Perhaps, sometimes.

Q. And all the advertising which is done under the Act in cases which are in your office?—A. No.

Q. Goes through you?—A. Well, no: Oh, no, there are some—a great many trustees who do not come to me. I have all the forms of proxies and claims and all that printed at my cost, and I furnish them with that. That comes from a habit in the Province of Quebec for the chief officer of the Department—in this Department it was the same thing under the abandonment of properties—they come to me and I have all these forms printed and ready for them and it saves them a lot of trouble and expense. Everything is paid by me, and I make them all and they are all out of the trouble of being obliged to send this advertising to the papers.

Q. Would you care to tell the Committee what revenue you derived last year from the administration of your office, apart from the $3,200 salaries?—A. Expenses paid?

Q. No, the gross revenue?—A. Well, the gross revenue would be about $12,000.

Q. When you say "about," that means more or less, I expect?—A. More or less, of course, I haven't that in my head.

Q. Did you wish the Committee to understand that the Bar Association approved of the method which you have just described of administering the Bankruptcy Act?—A. Well, I do not know if they approve of that; it is not approved by resolution, but I went there and I gave them all the explanation three years ago. They were satisfied, apparently, and since then have done nothing and have continued to leave to me the making up of their judgments instead of making their judgments themselves. I draw up all the judgments, and, of course, if I do the work I am entitled to be paid.

Q. How many trustees in bankruptcy are engaged in the winding-up of bankruptcy estates in the jurisdiction in which you are Registrar?—A. I don't know. It is pretty difficult to say, because trustees—any person may be appointed trustee, and the creditors appoint them, so that every day we are faced with a new trustee. We don't know. We don't know at all.

Q. But you have a general idea of the number of trustees in bankruptcy?— A. Yes, very probably about 30.

Q. It has been stated that there are between 100 and 150 engaged in the business of winding-up bankruptcies.—A. Really, I would not be ready to answer that question. I have never calculated the number of trustees there were. They are not very numerous—I don't think they are very numerous.

Q. You have seen Bill 41?—A. Yes.

Q. Have you any comments to make on the suggested amendment to the Act which would set up a Department of Bankruptcy under the Minister of Finance, appoint a superintendent of bankruptcy, and limit the number of trustees to those obtaining licences from the Minister?—A. Well, I am of the opinion that a superintendent—whoever it is, or whatever it is—either a general superintendent with an office in Ottawa, or a provincial superintendent, is necessary and would go a long way to protect the creditors against the bad methods which are sometimes employed. I have no doubt that a superintendent, or a supervisor would hold them to the application of the law, that is, you have under the law this clause—that the monies of each estate should be separated from the personal money of the trustee. Well, in the province, I suppose in other provinces as well, we have two or three trustees we consider very bad because they do mix up that money, and they were indifferently paying in to one estate or into another; and that is why it is often when bankruptcy comes —some of them become bankrupt.

Q. It is to your knowledge that several men who are actually engaged in the business of trustees are bankrupts themselves, is it not?—A. Yes, some of them. It is necessary that the law should be amended so that we appoint only competent——

Q. Experienced?—A. I beg pardon—experienced persons should be appointed.

Q. You have said that two or three trustees have failed to render an accounting for estates confided to them. Conceding that this is true, would you hesitate to say that there are 22, or 23, or possibly more who have failed?—A. I do not know. Not as many as that I think. But I can recollect five or six who have left the country.

Q. You can recollect some others who have not even taken the trouble to leave the country?—A. Yes, and the insurance companies were called upon to pay for them.

Q. Yes.—A. Of course, I must say that those who have become inefficient or apparently fraudulent are no more appointed to the position; we would not allow it. We give instructions to the Authorized Receiver never to appoint any officer who is not worthy of the position.

I must say that in the province of Quebec we have two handicaps as to bankruptcy. First we have what we call the Thirty-day Goods Act. According to the Civil Law of the province when the seller sells merchandise to a party he has the right at any time to annul the sale if the price is not paid. Any time when there is a bankruptcy this period is reduced to thirty days after the delivery of the goods, so that I have seen many estates where everything was taken away under the thirty-day goods law. Nothing remains, or only a mere trifle.

And there is another handicap in our province—it is the landlord's privileges. When the first bankruptcy law was enacted, it gave the privilege to the landlord for three months before, three months due or approved before the bankruptcy and three months to come. With the amendment which was made in 1915, the landlord's privilege of submitting to the law which governed them on the abandonment of property, and in our province if the deed is an authentic deed, the privilege runs during the assignment of a debtor; and if it is four months before the end of the year and if his deed is an authentic deed, he is privileged for all the year following. It constitutes, in my mind, a handicap which we cannot act against.

I have known some bankruptcies where $20,000 of assets were left with $4,000, the landlord taking $16,000 for himself for his rent.

Well, the consequence of that is, that the landlord being absolutely sure of being paid, being privileged not only on the actual assets or the stock in the store, but on the merchandise to come, to thirty-day goods which come into the premises, they don't press the payment of their rent, they let it go, and then when he fails they come and take everything. There is nothing left for the trustee; there is nothing left to pay expenses——

Mr. JACOBS: Wasn't that law inserted at the special request of the province of Quebec?

The WITNESS: Oh, yes, perhaps so.

The CHAIRMAN: Mr. Delisle has come from Montreal. It would be hard for him to remain over. Would it meet all your views to resume our inquiry at two o'clock?

Mr. MACDONALD: I just want to ask him a question. You don't get any salary than from the province of Quebec as Registrar?

By the Chairman:

Q. Yes—$1,600.—A. I am paid by the Government.

Q. And $1,600 as prothonotary?—A. That appointment was made in 1923. If you read up the speeches of Sir Lomer Gouin at the time, who sponsored the law, it was proposed that the Province take upon themselves to keep the money coming out of the Bankruptcy Act and paying the employees.

Q. That is sub-section 6, of section 162?

Mr. MACDONALD: It differs from Ontario in that respect. In Ontario they pay their Registrar, and officers salaries, and then take all the fees. They only pay you a portion of your salary and enable you to get the rest out of the fees for bankruptcies.

The WITNESS: They keep everything, they get everything. I have two deputy registrars. I have two clerks in the office and three girls. There is one who works exclusively at my expense.

By the Chairman:

Q. They are all paid—?—A. They are paid by the Government.

Q. They are paid by the Government?—A. And one is paid by me, and two or three of the others whom I engage to do my work, because I cannot do my work with the staff I have.

Q. Whenever an examination takes place and the services of an official reporter are required?—A. We take the office stenographer.

Q. And he is paid out of the assets of the estate?—A. Out of the assets of the estate.

Q. Mr. Delisle, can you tell the Committee how many estates are in suspense in your office?—A. In suspense?

Q. Yes.—A. Well it would be pretty hard to say.

Q. Well, there are at least 100, are there not?—A. Perhaps so, yes.

Q. Perhaps two or three?—A. We had an average of 500, or 600 last year; we had 600, or 700, this year. We have more in times of depression. We experienced the same thing after the war. In the years 1922 and 1923, bankruptcies were coming up to the office all the time, and this year it is the same thing—many, many bankruptcies. The trouble is that in times of depression the merchandise is not sold, can not be sold at even twenty-five per cent, and if you take into consideration the effect of the bankruptcies, and they run into thousands and thousands, we can not realize on the goods what they are worth. And then the

result is—well, I must say first that there are about forty or fifty per cent, of the bankruptcies which do not give enough to pay even the trustees; to pay the costs. And that is because, I think, of the low amount exacted, $500, to ascertain the bankruptcy of a man. If it was fixed at $1,000, I think it would have the effect, as a result of diminishing the number of bankruptcies. In fact, a man must be very poor, if he is in trade and does not owe $500.

Sometimes the creditors, in order to use the bankruptcy law for blackmail, in order to be paid by that man, frighten him by a petition of bankruptcy, in order that the man will come and pay them if he doesn't want to go into bankruptcy—and there is nothing for anybody; even the Trustee isn't paid.

Q. Have you any opinion to express about farmers?—A. Yes.

Q. And the provisions of the Act which enable them to make assignments?—I think—I am of the impression, if I judge from what is offered in the Province of Quebec, that farmers should not be allowed to go bankrupt. Indeed, we can't force them to be bankrupt, and they can assign. They are approached at times by creditors who tell them that everything will be done, and that everything will come out all right, and they go to an official receiver and assign. But often that should not be permitted because we have the evidence that in a certain part of the Province the farmers have lost their credit, and they cannot borrow even $200 on their farms.

Mr. MACDONALD: You are of the opinion that the Act should not apply to the farmers of Quebec at all?

The WITNESS: I don't know—I can't speak for every province, but I am of the opinion that farmers should be exempted from bankruptcy, because it is an invitation for them to speculate with their estate, or do things which they should not do.

By the Chairman:

Q. You have referred to the solicitation of farmers by trustees or their agents?—A. Yes.

Q. Will you kindly tell the Committee what you mean?—A. Well, there are some trustees who are watching at the Bankruptcy Court—not at the Bankruptcy Court, but at the Supreme Court—to see if a man is sued. Those who are sued often assign. When a man is sued they go to him and say: Your business is bad, don't you think that you should get me—that I could settle that all right; and you would get free? And when that poor man is approached that way, he goes and assigns, and he never gets back any of his goods or chattels.

Q. That practice of solicitation is not restricted to farmers?—A. To farmers, oh no; to all traders.

Q. There is an amendment, a suggested amendment to the Act, which precludes the solicitation of proxies. What would you think of precluding solicitation of bankruptcies, and making a denial of fees one of its sanctions?—A. I think the solicitation of bankruptcies is the cause of all the mischief in the administration of the law. The trustee has some agents and they go to the creditors and then, in order to get as many proxies as possible they tell him, well, give me your claim, your estate; appoint me to receive and we will fix that all right. I don't say it is done that way. I am told so, but I can't stress the fact. I do not think that an amendment, that an ordinary amendment, unless there is a very heavy penalty would do anything, because we have already in the law a provision which prevents the trustee or a custodian to send his name. What he does is to send a man to go there.

Q. Would the provision which would deny fees to a trustee, who had directly, or indirectly solicited bankruptcy, remedy the situation to any extent, in your view?—A. Well, the right way would be to attack that before the wrong is done. A trustee goes before the Official Receiver with proxies—not later than

yesterday there was a petition presented to me which would be heard on Friday, I think, the 28th, alleging that a debtor, threatened by a petition in bankruptcy, and in fact having received a copy of the petition in bankruptcy of one of his creditors to whom he owed a little more than $500, went to many persons and said: Can't you increase your claim so that I can appoint so-and-so? And in that case he found a man who increased his amount, and it was, of course, called and the trustee appointed. Well, a petition is made asking that all these things be annulled, and if it is disclosed, as no doubt it will be, no trustee be appointed. It is pretty hard to foresee what would be the real effect of this amendment, unless there is a heavy penalty. If there was a criminal penalty authorized it would work out.

Q. Would you favour such a penalty?—A. Yes, I would.

Q. What percentage of bankruptcies, in your opinion, are fraudulent?—A. Oh, well, it is pretty hard for me to state that. Of course, when frauds are committed, when the debtor is crooked and the creditor is with him to do something wrong, they don't come to the Registrar over that. It is like the schoolmaster with a lot of cheeky boys. He doesn't expect them to do wrong and very often he does not know the wrongs they are doing; and that is the case with a registrar who, of course, is the last one to know of it. When the parties come before us and we have the facts, we judge, and we always try to do that in the spirit of justice and fair play.

Q. But you know, Mr. Delisle, that the Bankruptcy Act and its administration in the province of Quebec is being severely criticized?—A. It is criticized, like all other laws—we criticize the administration the same as in other provinces. There is nothing more in Quebec than elsewhere. In Montreal we have a very cosmopolitan population and then we may have some men, some debtors or some creditors, and I am sure there are, who try to deceive.

Q. My question is this—and I'll ask you to take my statement—that the law and its administration in Quebec are under severe criticism. We have had from witnesses here a very great number of written complaints which have been addressed to the Department of Justice.—A. About what? About the administration of the law?

Q. Yes.—A. Well, what administration of the law?

Q. About many aspects of it. But I wanted you to say, if we concede that there is that criticism, upon what conceivable basis it can rest.—A. Oh well, I don't know, really I don't know.

Q. You have told us—A. The criticism may come from the fact that sometimes the dividend is very low, but I explained to you members what caused that. If the creditors are not paid, they always criticize.

Q. You have told us of the practice of some of the trustees and solicitations which they make of prospective bankrupts. Do you think that the licensing of trustees would in any measure curtail the ill which you have described?—A. The what?

Q. The ill which you have described—the basis?—A. Oh, well, maybe; I don't know, I could not answer that question.

Q. How many trustees are necessary to administer the Bankruptcy Act in the district in which you are Registrar?—A. Well, 25 or 30—20 or 25; something like that, would be sufficient.

Q. And if these men were licensed, after some scrutiny as to their capacity, experience, and record, would it not, in your view, curtail——?—A. Absolutely.

Q. The possibility, or probability of abuse?—A. There is no doubt as to that, should the trustee be appointed by the Minister of Justice. It would do much to curtail fraud. He would be under a heavy bond which, of course, is a charge against the estate, but I must say that in the Province of Quebec sometimes the bond exacted is very, very heavy. I am not here to criticize

anybody, but it seems to me that the hypothetical creditors are sufficiently protected if they are included within reasonable bounds, but when you go so far as imposing a bond of $50,000 or $100,000 on a trustee to have to administer the estate and settle everything, the money goes to the insurance companies. Practically, they pay $5 per thousand dollar bond, I think.

Q. Can you point out in the tariff the articles under which the Official Receiver exacts fees from the bankrupt estate?—A. Yes. You have in part 3 fees payable to the Official Receiver.

Q. That is at page 171?—A. It is part 61.

Q. Fees payable to the Official Receiver?—A. Yes.

Q. Well, I understood you to say that the Official Receiver exacts what amount?—A. I think $16.40 they pay in each case; and if you look at the fees for making—fees of the Official Receiver for making, and all that, you have that in there—that is all the law says for the Official Receiver.

Q. The only tariff under which the Official Receiver may exact—how much did you say, $16.40—is found at page 171, part 3, of the scale of fees payable on proceedings?—A. Yes.

Q. Now, will you also be good enough to point out in the tariff the authority under which you exact fees from the bankrupt estates?—A. What fees? The fee of the Official Receiver.

Q. In your own office as Registrar?—A. Well, my own fee comes from the authorization I have, from—my own fees as to the judgments; I don't think there could be any argument attached to that.

Q. Beginning with that, where do you find a fee to a Registrar provided in the tariff?—A. In what?

Q. What I want to know is if you could point out the items of the tariff which provide fees to the Registrar?—A. There are no fees for the Registrar except article 28, section 4, for certificates which are given. That is the only fee I find in the Act.

Q. You refer to the following provision:

A fee not exceeding 25 cents for each search.

A. Yes.

Q. And 50 cents for each certificate may be charged by such a registrar, reporter, or clerk.—A. Yes.

Q. So, then, any cash received by you as Registrar is the result of an arbitrary charge made by you without any sanction under the Act?—A. Well, it comes always under the principle that one who works should be paid. If I draw up all the judgments I must be paid for them.

Mr. ANDERSON: Would not that come under 57 on page 168, under the heading under which the drawing of the judgment is provided for?

The CHAIRMAN: What page is that?

Mr. ANDERSON: Page 168, Mr. Chairman.

The WITNESS: We do the work, and we put that in their bill of costs—the bill of costs of the lawyer. He does not receive it, I receive it because I do the work. There is nothing in that against the provisions of the Act.

By the Chairman:

Q. You are referring now to the tariff of costs at page 167 of the Act?—A. Very probably—the tariff of costs for preparing.

Q. It deals exclusively with solicitors' fees—A. Yes, absolutely.

Q. I think we have already gone over this aspect of the matter—where a solicitor is engaged, he receives his taxable fees.—A. His taxable fees, if he does the work. If I do the work, I am to receive that and it is in his bill of costs. He does not receive it, it is work done by another party. I would prefer it very much if the lawyers would come to the conclusion to draw up

their own judgments, that would take off my shoulders an amount of work which at my age I would be very glad to get rid of.

Q. But on the petitions, for instance, there is a charge there of $3.—A. That is a judgment—that is for the drawing up of the judgment. I explained that.

Q. Yes.—A. It is always $3—a compromise, discharges, on everything—I draw up the judgment, and I am paid for it.

Q. And on a composition there is a charge of $22.—A. Yes.

Q. Of which the stamps amount to $9.—A. Yes.

Q. And on the discharge of a debtor there is a charge of $25?—A. Yes.

Q. On which the stamps again amount to $9.?—A. Yes, it is the same thing.

Q. How do you explain the difference between the gross charge and the stamp charge?—A. Well, I take the first three dollars for the report sent and drawing up the judgment; and I take what it would cost to engage a stenographer to take an inquiry and I take the inquiry by long-hand—I work for it.

Q. Do you think it desirable that officers occupying a quasi-judicial office should receive fees from litigants?—A. Well, it is rather as chief officer of the office that I do that, because the consequence is that I do that as Registrar because I used to draw up all the judgments before the Bankruptcy Act, and the first officer of the office always drew up the judgments and was paid for it.

By Mr. Macdonald:

Q. The objection as I see it is this—A. I do not see anything that is contrary—

Q. I understand, Mr. Delisle, that all the fees you get come out of the solicitors' bills, and you tax these bills yourself?—A. I do the work by my own hand.

Q. You tax the solicitor's bill?—A. I did that because my salary wasn't any too large.

Q. The only important point I take is that you are taxing your own bill.

The CHAIRMAN: It goes into the bill with the disbursements.

The WITNESS: And it is a disbursement too; we add that into the bill.

The CHAIRMAN: It goes into the bill as a disbursement to the Registrar.

Mr. MACDONALD: Seemingly he paid the Registrar and included that in the disbursements as an amount which goes to the Province and to the Registrar. Who taxes the bill?

The CHAIRMAN: The Registrar.

The WITNESS: Before a lawyer, it would cost five to six dollars, but in this way of doing things, it costs $3 and not more.

The CHAIRMAN: Are there any other questions, gentlemen?

Mr. JACOBS: Mr. Chairman, you asked Mr. Delisle about the gross proceeds of his office.

By the Chairman:

Q. Oh yes. Mr. Delisle, you said that the gross revenue from your office was, apart from your salary, about $12,000.—A. Yes, and I have to pay out of that a stenographer, and buy a machine, and do the work, and pay everybody.

Q. But you only pay one girl in your office.—A. Well, I pay one girl, but two others I engage generally, they are ordinary employees, and during their lunch time they do work for me. That helps them, for, you know, these girls earn only $55 a month and sometimes they have an old father and mother to keep, to provide a living for, and they are happy to work in their lunch time to earn $5 or $10.

Q. But this girl who works for you receives part of her salary from the Province?—A. Not at all; not one cent. The whole salary is paid by me.

Q. How much salary do you pay her?—A. $40 a month, with extras. It would come to about $50 or $60 a month.

Q. Then you provide your own stationery?—A. Yes.

Q. Well, in disbursements, do you pay out for your girl and for your stationery more than $1,000 per year?—A. Oh, yes, I pay more than a thousand, I pay two or three thousand dollars a year.

Q. You have not the details of that?—A. No, I haven't the details, but I can have them—I can tell you absolutely what I disburse, and it is more than $3,000 I am sure. So that I remain with a very, very small revenue if we calculate the tremendous amount of work I do.

The Committee adjourned until 10.30 o'clock tomorrow morning.

HOUSE OF COMMONS,

WEDNESDAY, April 27, 1932.

The Special Committee on Bill No. 41 an Act to amend the Bankruptcy Act, met Wednesday, April 27th, at 10.30 a.m., Mr. Hackett presiding.

G. D. FINLAYSON called.

By the Chairman:

Q. You are the superintendent of the Department of Insurance?—A. Yes.

Q. What acts, apart from the Insurance Act, comes under the administration of your department?—A. The Insurance Act, the Loan Companies Act, and the Trust Companies Act. There are certain parts of other acts with which we are mainly dealing, with certain government measures, such as the Civil Service insurance, and one or two other minor acts that we do administrate.

Q. But generally speaking, the duties of your department consist of supervising and checking up the way that insurance companies and trust companies carry on their business?—A. Yes.

Q. And verifying their position as solvent, and that the act in a general way is lived up to by them.—A. Oh, yes, we have to, under those acts. We have to license these, the three classes of companies, insurance, trust and loan companies. Under those licences and under the acts, those companies are required to file with the department annual statements of their conditions and affairs. But it is the duty of the department and its officials then, to visit the head offices or the chief agencies in Canada of outside companies and verify or amend and correct those statements. Then, having done that, we are required to incorporate those amended statements in a report to the Minister, which is available to the public.

Q. Have you had an opportunity of reading Bill No. 41?—A. Well, I have, very superficially, I am afraid, since I got the summons to attend this committee.

Q. Have you taken communication of clause 18, which provides for the appointment of a superintendent?—A. Yes.

Q. I should like to draw your attention to two aspects of such an appointment: the first objection to it is that it would cost money. The answer to that is if the trustee does one tithe of what is expected of him, he will save any disbursement many times over.

Mr. SPEAKMAN: That is for the superintendent. I thought you used the word "trustee."

The CHAIRMAN: Superintendent.

Mr. MACDONALD: Section 19, instead of 18.

The CHAIRMAN: I am sorry I made that mistake. Will you say if you have considered the approximate cost of carrying out the duties which are imposed upon a superintendent in the bill?—A. Well, I have not considered it particularly from that standpoint, for two reasons: the first is that I have not got the necessary knowledge of the extent of those bankruptcies at the present time.

Q. There were about 3,200 last year.—A. Yes. But whether the number of trustees whom it would be necessary to supervise in some measure under this amendment—

Q. We were told in Ontario there were between 20 and 30; we know that in Quebec they are somewhere between 100 and 50, and it has been asserted that

from 20 to 30 in either province is sufficient. Now, over half the bankruptcies in Canada took place in Quebec last year.—A. Yes.

Q. So you see that will be near home.—A. So I would say there would be less than 100 trustees.

Q. That seems a fair number.—A. Altogether. I suppose a good many of them would be quite small.

Q. Yes.—A. I suppose even in the case of the large trustees it would not amount to an examination of the company as a whole; it would mean only an examination of a part of its work connected with the administration of assets. Most of these trustees have a large amount of work which would not enter into it.

Q. It would only have to do with the bankruptcy.—A. Yes.

Q. Bankruptcies confided to them.—A. Well of course, I am in this position, of having no experience with bankruptcies. I do not like to talk about something I know nothing about. The business we have been in has been the very antithesis of bankruptcy.

Q. It has been prosperous?—A. We do not have bankruptcies in insurance companies and trust and loan companies, nowadays.

By Mr. Jacobs:

Q. You have weeded them out.—A. There was a time when we did have a few, but what is left now is pure gold. Our function under those acts is not to wind up companies; it is not to deal with them when they become insolvent. It is to keep them from becoming insolvent. The whole test of the efficiency of the department is to see how few bankruptcies occur.

By the Chairman:

Q. What is that?—A. As a matter of fact, that is the way it is working out.

Q. And one of the ways that you avail yourself of to bring about that result is to keep in close contact with the administration of those companies?—A. That is the point.

Q. It has been suggested that many of the abuses which arose under the Bankruptcy Act, arose from a lack of supervision of the ways and eccentricities of trustees.—A. Well, from our experience with the companies with whom we deal, I should say that would be so; that prevention is the best—

Q. It is.—A. —method of proceeding.

Q. It is suggested by the bill which you have in your hand, that trustees in bankruptcy should be licensed, and that the licence would issue only to those applicants who would be capable of satisfying the Minister of Finance, after some investigation by the Superintendent or his representatives, of their solvency, experience and integrity.—A. Well, I can only speak of the propriety of this act and of these provisions from our experience with the companies with which we are dealing, and that is that it is sometimes a very simple matter to apply the check at the right time, at the initial stages of irregularities, it is a very simple matter to apply the check there, but if it is allowed to go on, it may become a very serious matter.

Q. We were told yesterday by the registrar from the district of Montreal, that a number of trustees in his jurisdiction were bankrupts themselves.

Mr. Jacobs: Bankrupt before they became trustees, and the other bill did not make them bankrupt.

By the Chairman:

Q. Not necessarily; judging from results. But all of the companies which are subject to the jurisdiction of your department, are licensed, are they not? —A. Yes.

Q. That may be a rather delicate term to use in view of the state in which our insurance legislation stands.—A. I quite approve of the term you use. It is an entirely appropriate one, I think. We have under the supervision of the department at the present time, 407 companies. There are 377 insurance companies, and 30 trust and loan companies. The greater part of the insurance companies are outside companies, so that our duties in respect of them is limited to the examination of their Canadian branches, as a rule. We have power to go to head offices but usually we do not find it necessary to do so, so that we have, I think, about 95 Canadian companies, about 65 British companies, and all the other insurance companies are foreign companies, coming from all over the world, but mainly from the United States.

Q. But the investigation which is necessary to find out the actual financial status of companies and the means necessary to get at that information, are all agencies with which your department is accustomed to deal.—A. Oh, yes.

Q. There is a provision in the bill which would impose upon the trustee the duty of making a return to the Superintendent of Bankruptcy. One witness with rather large experience, told the Committee that he disapproved of that, and that is the section upon which the Committee I think, would like information; because, said the witness, if this information goes to the superintendent, it will place an added obligation upon him and upon the government, and will, in a way, make the government responsible for any impropriety in the administration of the bankrupt estate. I may say that he assumed that the Superintendent would make no use whatever of the informaton. Can you say from the experience which you have, whether information of this type is required from the companies which are under your supervision, and what use, if any, you make of it.—A. Well, I have stated that under the acts, all the companies with which we deal are required to file annual statements of their condition and affairs. That is the whole basis of the work of the department. If we did not get that, we would have nothing to do. The statements come in. It is then our duty on those statements, to conduct an examination of the company, to verify them if they are correct, or to amend them if they are wrong. That is the whole basis of the work of the department; and so far as responsibility is concerned, of course we assume a big responsibility. But you have to do that if there is going to be any good done. Some person has got to assume responsibility, and while it may look like an almost impossible responsibility to assume, it does not work out that way. These British and foreign insurance companies have been coming into Canada ever since Confederation and before. We have now, as I say, some 215, I think, foreign companies coming in here. They are required to, now, at any rate, deposit with the Minister or with trustees here, for Canadian policy holders, assets in Canada. It is our duty to see that their liabilities in Canada are correctly computed, and that those assets in Canada are sufficient to meet those liabilities.

Well, it has worked out in this way, that since Confederation—and those provisions have been in force since Confederation—since the principle of filing deposits to cover full Canadian liabilities, and the deposits are filed solely for the protection of Canadian policy holders—since this provision came into full effect there has not been a loss of a dollar to a Canadian policy holder on any one of the companies; and the same thing applies in the case of Canadian life insurance companies. It is unknown for a policy holder of a Canadian life insurance company to lose a single dollar through the discontinuance of one of those companies. There have been a few cases of small Canadian fire insurance companies being affected by one thing and another, and discontinuing without being able to make full provision for policy holders, but in recent years even that has not happened.

By Mr. Kennedy:

Q. Mr. Finlayson, in the administration of your department, the administration contemplated is not investigation of all companies that come to your know-

ledge?—A. All except those incorporated by the legislatures of the provinces. Our jurisdiction stops when we come to the provincially incorporated companies.

Q. Having in mind, as I understand the proposed provision of this bill, initiating of trustees to file reports with the superintendent with respect to all assets, it is my understanding that in the administration of the act, they have not necessarily in contemplation the investigation by the superintendent of all such assets, but only such as might come to his notice, either by the reports filed or through investigation. Having that in mind, you, as the superintendent of insurance, would be proceeding on a different principle from what the superintendent of bankruptcy would be proceeding under; would not that be so?—A. I suppose that would be so, although I do not know what is contemplated in those amendments regarding the superintendent of bankruptcy.

Q. It embodies the superintendent investigating the estate—A. On complaint or not?

Q. There are no reservations.

The CHAIRMAN: I think Mr. Kennedy is well advised in taking up that phase of the question with you, and I will not debate the meaning of the section as drafted, because I think we should get Mr. Finlayson's advice as to whether or not he should be free to investigate of his own whim and volition. Sub-section F of 36A of the Act, 19 of the Bill, limits investigation—"Receive and keep a record of all complaints from any creditors or other person interested in any bankrupt or insolvent estate coming under the jurisdiction of the superintendent, and make such specific investigations with regard to such complaints as the superintendent may determine, and report to the minister thereon." Now, we have discussed here the broader question.

By Mr. Kennedy:

Q. That is what I have in mind—not only the Bill as it stands but the nature of the discussion as to whether or not his investigation should be limited to specific complaints, or whether, as the Chairman says, by his volition he might initiate investigations and if he is so empowered, then there has been evidence given as to the implication of responsibility in a case that he did not see fit to investigate?—A. I was looking rather at "B" or sub-section B of 36A which seems almost to put upon him the duty of satisfying himself as to the standing of every trustee, because he must make a report with the application for a licence which, I assume every licensed trustee must get, that the application should or should not in his opinion be granted.

Q. That sub-section, I think, will have to be considered by the committee because as I remember it it deals only with a renewal, not with the issue of the licence. I wish you would answer the general question?—A. On the general question, I should say it would be an essential that the superintendent of bankruptcy should be responsible for the standing of every licensed trustee; that he should not wait until complaints are received before exercising his supervisory powers.

Q. Would that carry with it the idea that he should investigate every estate being handled by that trustee?—A. No. I should not say so. I am speaking now of the standing of the trustees, not of every estate.

Q. My question has to do with the administration. Even assuming that the trustee has been regularly passed and decided fit and proper, then as he deals with estates if it is made necessary that he report to the superintendent on every estate there is the further question, then, shall a superintendent, having been given at least prima facie notice of the condition of the estate—should he investigate every estate, or would you consider that part of his necessary duties?

The CHAIRMAN: Before you answer that, Mr. Finlayson, allow me to interject. I am not sure that the report to be made to the superintendent is not

rather of the status of his work as a whole, indicating how long bankruptcy "A" and bankruptcy "B" has been in the process of winding up, rather than all of the details of it; just as the bank examiner can go into any account of any customer of the bank. His duty is primarily to find out how the bank is carrying on its general business with the generality of its customers.

Mr. KENNEDY: I think it is contemplated that returns would be made by the trustee in respect to each individual estate. As to the completeness of the terms I do not know; but assuming that the trustee makes a return under the amended bill to the superintendent with respect to each estate, then I am trying to get at the general principle as to whether or not in your view, if not necessary, would you consider it desirable in order to discharge any implied duties that he should investigate estates?

The WITNESS: Well, Mr. Chairman, it does seem to me that what the committe is more concerned with is in the standing and capacity or experience or integrity of the trustee. If you can be satisfied as to that you have a fairly good assurance that the administration of any particular estate in his office will be carried on on proper principles. I think that is what your main concern is in establishing the standing of the trustees. Now, on that point, it does seem to me if this section is adopted at all that it should be understood that there is some kind of responsibility on the superintendent of bankruptcy to keep a general eye at all times over the trustees, not to wait until complaints of any particular trustee are received, because this is our experience: Complaints never come until it is possibly too late. People never say anything so long as things appear to be going alright. When the time for a complaint comes it may be too late to act. I say that is very largely our experience in connection with the Loan and Trust Companies Acts. When these Acts were revised in 1914 there was a suggestion that loan and trust companies should be made subject to an annual systematic inspection the same as insurance companies. Well, for one reason or another, good at the time I think, that was not adopted; but there was a provision that the Minister could, where it appeared necessary for him to do so, make a special examination or investigation of any loan or trust company. As that provision worked out, no examination was ever made, and I think every Minister became convinced that no examination ever would be made under that provision, because it singled out a particular company for special treatment, and if the complaints were not well founded then a hardship was done that company from the publicity point of view due to the fact that it singled out a company for special examination, and if the complaint was well founded it was probably too late to supply the necessary check. So that provision remained for about ten years, and it was then changed to provide for a systematic annual inspection of trust and loan companies in exactly the same way as with insurance companies, and I am sure it is the better system. Now, whether or not that is applicable to what you are considering here, I am not entirely clear, but I do see danger in having the superintendent of bankruptcy's responsibility limited to dealing with complaints when they come along.

By the Chairman:

Q. It is your considered view that if the superintendent is to exercise effective control and give to creditors the full benefit of the moral impetus and probity resulting from possible detection of any impropriety, the superintendent should at all times be free to investigate any trustee of any bankruptcy submitted to his administration.

By Mr. Jacobs:

Q. Whether there is a complaint or not?—A. Whether there is a complaint or not. I think it should be his duty to keep in constant touch with these

trustees. Now, of course, someone may say that that power will be abused. My own impression is that any person taking this up will be so busy that he will be very glad to get along with the least possible work of that kind. It will not be a case of looking for more to do, but looking for less to do consistent with his responsibility.

By the Chairman:

Q. We have been told by a return from the Dominion Statistician that in the year 1931 these dividend sheets came under his supervision, and there is an implication there that they did not all come under his eye—dividends aggregating ten and one-half million dollars, and in the ten and one-half million dollars were included the expenses of administering the bankrupt estates?—A. After deducting expenses?

Q. Before deducting expenses. One-half of one per cent of ten and one-half million dollars would be fifty thousand dollars odd if my calculation is correct. Of course, if we had to deduct from this ten and one-half million dollars the cost of administration I think the witness said yesterday it was about 10 or 15 per cent, then, of course, there was reference to preferred claims and liens which will be paid in any event. So, probably as a very rough figure we could take half that amount as going to ordinary creditors—five million dollars —who, in the ultimate analysis, would bear the charge of the office which may be created by this Bill, unless we caused the charge to rest—and I think we may consider that—upon everybody—the costs upon the preferred claims and upon everybody. Unless we did that we would only have about five million dollars left.—A. I should think that would be important. I had a note here on section 120 inserted by section 38 which contemplates the deferring of the cost of the office to the Receiver-General of Canada, "such percentage of the gross receipts." Does that not refer to preferred claims and liens?

Q. I think that is true; but unless it was implemented it would still fall upon the ordinary creditor, and without having considered the matter very closely, it would seem to me that the cost of this administration of a department of bankruptcy should fall upon everybody, upon the preferred creditor——

Mr. JACOBS: On the just and the unjust alike?

WITNESS: I think that is a sound principle. There is an analogy in the case of the companies that we deal with. I have often said that that problem of the supervision of these companies is a problem for about 10 per cent of the companies. The great majority of companies are going to do the right thing anyway without any supervision. They do so in many countries; but there is a minority of companies that do need supervision. At the same time, the costs of that supervision are imposed on all companies, and the larger and better the companies the more pleased they are to bear their share; because while they, quite properly, may not feel that they need supervision, they do not want any company to become insolvent because it places a stigma upon the entire business and they are interested in having the general reputation of the business kept high.

By the Chairman:

Q. I was endeavouring to lead up to an estimate of the costs and the consequent levy upon the gross realization of the estates necessary to defray the expenses of a department. Would you think that one-half of one per cent would be necessary?—A. I would not like to make any estimate because I have not complete knowledge. I would not like to commit myself to any estimate. I think the best I can do for the information of the committee would be to say how the system we have administered works out in that respect. We have a similar position to this. The supervision carried on by the department imposes

no net cost on the Dominion Treasury; there is a reimbursement by assessments upon all the companies affected.

Q. I am going to suggest to the committee if we pass this section that we do provide for a nominal contribution from the consolidated fund so that there might be an annual vote, let us say, of one thousand dollars to permit any irregularity coming before Parliament each year. I think that that will be another opportunity to stiffen the Act and to make known any irregularity?—A. I think I would go further than that and I would have the whole vote come before Parliament and then provide for reimbursements. While the expenses of our department impose no net burden on the treasury every dollar of expenditure comes before Parliament in the way of estimates in exactly the same way as any other department of government. What we do is this: There will have to be a little variation from what we do if you adopt this measure. Every year we make an assessment from all the companies supervised by the department. The basis of that assessment in the case of insurance companies is the net premium income in the preceding year. The expenses are the expenses for the last fiscal year. For instance, the assessments we made in the autumn of 1931, last year, were based on the premium income of each company for 1930, and the expenses of the department for the fiscal year 1930-31. We ascertained the entire expenses to the administration of the Insurance Act and we imposed an assessment on all their companies in proportion to their net premium income in 1930.

Q. Of course, it would not be quite as easy here?—A. No.

Q. Because you have a continuity of operation to your companies whereas one of the complaints levied against the administration of the present Act is that the administration is too continuous and is never terminated, and the aim would be to wind up the company as soon as good administration would permit. You would have to reach probably an arbitrary figure some time in advance of definite knowledge?—A. I am not sure how this estimate would be made. I see that the expense of the supervision is a charge against the estate, "such percentage of the gross receipts as may be fixed from time to time by the Governor General in Council." I should think that could only be ascertained by experience.

Q. For the first year I assume you would have to make an estimate and levy, let us say, one-half of one per cent. If that was to much it might go into a fund. I understand that in England they have a fund which is increasing all the time. The moneys that are not claimed by absentee creditors or which are held in suspense for some reason have to be turned over by the trustee to the Board of Trade and the interest on that fund defrays in a large measure the cost of the Department of Bankruptcy in the Board of Trade.

Mr. SPEAKMAN: As far as the whole department is concerned, I imagine that could be carried on as indeed all departments are with the salary of the superintendent, and all costs of administration incidental to his office would be subject to an annual vote. I do not think any of them have a trust fund in which the actual results of any levy made are paid into a separate fund under the jurisdiction of anyone other than the Receiver General. It is the same with the administration of the Canada Grain Act and all those other Acts; all of the expenses incidental come under the estimates and are voted year by year. The payments made are made into the consolidated fund, and no separate fund is kept, although separate accounts are kept.

The WITNESS: That is contemplated by the wording in section 121. The payment is to the Receiver General, not to the Bureau or to the office. Now, if the Receiver General is to receive this money, the Receiver General must pay the money, and if he is going to pay the money that is going to be voted by Parliament there will be ample opportunity for discussion. Every dollar spent in the superintendent's office should be voted by Parliament.

By Mr. Kennedy:

Q. While we are on this matter of the expense of the department, it has been suggested naturally by creditor interests that the expense of administration be borne by the government. Now, is there any other department that is analogous to that; that is operated in an analogous way?—A. I think, as a general rule, parliament and the government are anxious to shift the burden wherever they can. They do not want to assume any unnecessary burden; but in a number of cases such as our own department it is regarded as a perfectly proper charge against the companies.

Q. I realize that; but my point is that they are asking that in this case the responsibility be borne by the government. Is there any department administered in any analogous way to which creditor interests may point and say, "You do it in such and such a way in this case, why cannot you do it now?"—A. The closest analogy is the Inspector of Banks, and I think the same provision applies there.

Mr. VARCOE: I would suggest that that is probably so, although I do not know.

The WITNESS: I think it does. I think the expenses are provided by assessment upon the banks. In answer to Mr. Kennedy's question, I cannot recall at the present time any service similar to this where the burden is not borne by the business.

By Mr. Kennedy:

Q. Just one step further. It has also been suggested that if it is not borne entirely by the government that it be not borne entirely by the creditors, and I do not know how completely the suggestion has been made, but it has been suggested that the amount to be paid out of the estates to the government should be limited to an amount not exceeding, we will say—the Chairman mentioned $\frac{1}{2}$ of 1 per cent or $\frac{1}{4}$ of 1 per cent or some fraction. Have you any views as to such provision?—A. I do not think it is a wise thing to divide the burden. I think it should be placed one way or the other. At the same time I am not in a position to suggest any probable rate or limit. What I do think the committee should do is this: As the Chairman suggests, to have a vote which might permit preliminary investigation by whoever is appointed to carry this out, and after a year's experience he may be able to suggest some provision which could be inserted. I think in any event it is well you should have in mind that it is not possible to get this in final form this year. You will probably have to amend it again next year. We had the very same thing in the Loan and Trust Companies Act. When we decided to carry out systematic inspection we did not know what it was going to mean or what powers we should get; we had a skeleton provision providing for investigation, and during the next year or two we carried out preliminary investigations of all these companies and came forward with suggestions for legislation. It was not acceptable to all of them in all cases, but it has worked out fairly well. I think you will have to have in mind some preliminary investigation by the official and have him recommend limits such as you are now suggesting as the result of experience gained in that way.

The CHAIRMAN: For the information of the committee the Minister of Justice has intimated that the government is not at all desirous of assuming any portion of this cost. To what extent his opinion might yield to pressure, of course, I am not in a position to say. He appeared to be of the view that this legislation had the approval of the government upon the condition that no further burden was put upon the Exchequer.

By Mr. Kennedy:

Q. Let me go one step further. It is really a recapitulation. Assuming that whatever financial burden is necessary is going to be borne by the creditors, I

take it as your opinion that that should be borne by the creditors and the provision made accordingly?—A. I think so.

Q. It will not, in the ordinary course, rest upon the ordinary creditors, but upon all?—A. I think it should be borne by all creditors because all creditors are receiving the benefit of it.

Q. Will that include government creditors?—A. I cannot see why not.

By Mr. Jacobs:

Q. What about the landlord and other preferred creditors? They are not preferred if they have to bear the burden equally with the ordinary creditors, and they no longer are preferred?—A. My impression is that sometimes the landlords allow rents to get so far in arrears that they do not require very much.

The CHAIRMAN: I think the answer would be that if the new legislation is as beneficial as some hope it will be, the expedition with which estates would be wound up and the prompt payment which would result from that would give back to preferred creditors the very slight deduction which might be made from their claims.

Mr. JACOBS: It is a nice constitutional question.

The CHAIRMAN: Of course, you could treat that, I dare say, as a tax but if Mr. Finlayson can tell us about that, that might possibly be overcome in that way.

Mr. KENNEDY: Don't you think it would be rather optimistic to expect all the preferred creditors to feel grateful because things were being expedited? Would not they look upon it as their rights in any event?

The CHAIRMAN: That is a very reasonable point of view.

Mr. MACDONALD: With regard to this question of costs and as to whether the government should bear all the costs or whether they should be borne by the creditors, I think there is a fairly general opinion that the government should not interfere with business any more than is absolutely necessary, and if the government is going to undertake any such expensive supervision as that, would it not entail also a very large staff and also fairly large responsibility which was referred to by some of the witnesses that the government would be held more or less responsible for the actions of the trustees?

The WITNESS: Well, I think on the latter point that is inevitable; I think the government has got to assume responsibility.

The CHAIRMAN: It is policing.

WITNESS: Yes.

Mr. JACOBS: There were 3,200 insolvencies in Canada last year, I understand.

The CHAIRMAN: Yes.

WITNESS: I do not mean that there should be any responsibility on the government.

The CHAIRMAN: To make good losses?

WITNESS: To make good losses. The responsibility of the government is to see that the trustee does the best with any estate that can humanly be done, and that he is in a position to carry out the winding-up efficiently and without undue expense. It does not mean that estates may not go into his hands which may only pay 5 cents on the dollar. That is not a regulation on the trustee or the government. The thing is that he get the most out of the estate that can be got out of it. The trustee surely has no responsibility, because the estate did not come to him soon enough, to yield a proper dividend to the creditor. It is a question of him doing his duty efficiently, honestly and properly after the estate does come to him. That is as far as the responsibility of the trustee and the government goes.

Mr. MacDonald: There may be another responsibility with regard to the administration of a bankrupt estate where it is clearly fraudulent, and the question is whether the trustee has done everything in his power to punish the fraudulent debtor.

Witness: In that case if there is a fraud I should think the trustee's duty would be limited to the Act, to report to the Attorney General of the province.

Mr. MacDonald: This difficulty comes up. The Attorney General of the province, so far as Ontario is concerned, we were informed yesterday, will not undertake the prosecution at all. His department says it is a Federal affair and the Federal government must carry on the prosecution.

The Chairman: Of course, we are endeavouring to meet that by conferring upon the bankruptcy judge powers to commit and to initiate a prosecution, which he did not have before.

Witness: That would be the remedy if the Attorney General refuses to act.

The Chairman: And furthermore the administration of the Act which, as the legislation now stands, rests with the Department of Justice, is repealed.

Mr. MacDonald: It will take the matter out of the hands of the Crown prosecutors, as we know them, and put it into the hands of special prosecutions with the Justice department.

Mr. Varcoe: No, sir, it is the very opposite. Under the present Act the statute provides by section 202 that the administration of the Act is in the hands of the Department of Justice. This Act shall be administered by the Minister of Justice. Now, some of the provinces have taken the position that on account of that provision being there the entire responsibility for prosecutions rests with the Department of Justice. Of course, that is contrary to the constitutional provision of the British North America Act that the administration of justice in the enforcement of criminal law is with the provinces.

By Mr. Kennedy:

Q. There have been suggestions made, Mr. Finlayson, I think out of compliment to you, that if a department is set up such as is contemplated by this Bill it might be administered in conjunction with your department; not assuming that you have not enough to do but the assumption is that it might lend itself to being administered in conjunction with your department, saving expenses and also the general feeling is that it will be well administered. Have you any views? —A. I really have not thought of it very much except from this standpoint. The only thing I can say is that I do not see any particular reason why it should be in our department, because, as I say, we do not deal with bankruptcy, and I would not like to have insurance companies, loan companies and trust companies associated with bankruptcies.

Q. We can infer that you would not be favourable to such an arrangement? —A. The other point is that there is no margin of labour in the department at the present time; in fact, there is a shortage.

Hon. Mr. Lapointe: That would be a 10 per cent increase in work and a 10 per cent decrease in staff.

The Witness: Up to the present our work has been increasing at a very rapid rate, and while we have been able to get good men, we have not been able to hold them. We have lost good men. I certainly do not feel like assuming any responsibility. We are falling behind in our work now. Unless some provision could be made for giving reasonable encouragement to the men we have I would not like to take on any further responsibilities. At the same time, it does not appear to me that that is essential for the committee. This legislation is good or bad on its own merit quite apart from any person or office which is called upon

to administer it; it must justify itself as legislation, quite apart from administration. I have been anxous to give the committee the benefit of any experience we have had through the other Acts, not at all as a prospect of administering the provisions of the Act. At the same time, we are servants of the government, and if the government feels for any reason that we are best fitted to do this work, and if the proper assistance can be assured us, we are quite prepared to obey instructions. That is our position.

Mr. JACOBS: That is a noble sentiment.

By the Chairman:

Q. Mr. Finlayson, I have understood from what you have said concerning the cost of administering the Act, you have with commendable prudence said that you could not make anything like a definite estimate, but would you think that $50,000 would cover the cost of such an office?—A. Well, perhaps the best I can do, Mr. Chairman, is to give you an idea of what we do now. As I have said we have 407 companies, I think it is.

Q. With assets amounting to how much?—A. With assets amounting to approximately two billion dollars. The expenses of the department—there was some extra expense last year—ran in the neighbourhood of $150,000. Now, that included a printing bill last year of $37,000.

Q. That is extra?—A. That is extra. We have to print these big statements—two big volumes and they are quite expensive.

Mr. JACOBS: That is done annually?

The WITNESS: Yes, that is done annually. It runs about on the average between $35,000 and $40,000 a year. That would not be incurred in the administration of this Bankruptcy Act. Then there is $94,000 as a payroll.

Mr. JACOBS: For how many officials?

The WITNESS: Something over 41 or 42 officials. That is the entire payroll.

Mr. JACOBS: The average salary is a little over $2,000?

The WITNESS: Yes, that would be about right. There are travelling expenses of $10,000. There are miscellaneous contingencies of about $12,000, less than that. Now, with regard to the assessment. I have explained how this is distributed among the companies. The assessment upon insurance companies last year was 50 cents for every $1,000 of premium income. There was $281,000,000 of insurance premiums to bear that cost. There were small amounts attributable to trust and loan companies, but the great majority of the expense fell on the insurance companies. 50 cents is 1 20 of 1 per cent of the premium income. I can only give you my impression, but excluding this printing bill and some of the other special expenses, the cost of the department is down to about $100,000 administering these Acts and supervising these 400 companies with two billion dollars of assets. I can only give you my general impression that the figure you suggested should be the outside figure. That is very general, and is based on lack of complete information.

By the Chairman:

Q. Are there any other questions to be put to Mr. Finlayson?—A. There was one suggestion which perhaps I should mention with regard to the section providing for the duties, section 36.

Q. Eighteen of the Act?—A. Yes, 18 of the Bill and 36 of the Act. It contemplates—subsection 2 of section 36 provides that on application for a licence there should be a deposit of security made for the due and faithful performance of his duties. It appears to me that that should not be demanded at the time the application is made. There might be scrutiny of the application and before the licence is issued the security might be called for.

Q. We have had this suggestion made, that the trustee, before the licence is issued to him, should secure a bond for general good behaviour and that he should

not be free from the obligation which rests upon him now of securing a bond particular to each bankruptcy?—A. Yes.

Q. We think that to some extent that modification of the Bill was approved by the Committee?—A. That his bond might be a nominal one?

Q. Yes?—A. Otherwise the bond would have to be a very large amount to cover the maximum estate.

Q. It was pointed out that that might restrict the number of trustees unduly? —A. It would only get the big fellow to qualify for a licence.

Mr. JACOBS: Have you ever thought of the idea of having the whole profession of trustees in bankruptcy abolished and have bankruptcies handled entirely by the government?

The WITNESS: No. I never considered it at all.

The CHAIRMAN: That system, I believe, was in vogue in many of the states for some time and has been abandoned.

Mr. JACOBS: In England I understand that is the rule; every trustee in bankruptcy is a civil servant and is an official of government.

The CHAIRMAN: Every trustee in bankruptcy is a servant of the court here.

Mr. JACOBS: Yes, in a sense. The idea I have in contemplation is that the government would pay these men a regular salary; that they would be attached to the department of government and be civil servants, doing nothing else.

The WITNESS: I am afraid it savours too much of what Lord Hewart calls the "new despotism."

Mr. KENNEDY: Mr. Chairman, Mr. Turnbull had to be absent to-day and asked me to make a statement. I would like to file some submissions which he left.

The CHAIRMAN: He sent me a copy of them.

Mr. KENNEDY: I would like to have them put on the record. Mr. Turnbull, M.P., one of the members of the Committee, finds it necessary, owing to his parliamentary duties to be absent from the rest of our consideration of this Bill. He handed me a copy of certain suggestions embodying his views with reference to the Bill now before the Committee. I merely went through them in a cursory manner, and I am offering no opinion as to their desirability or undesirability. I have undertaken to see that they are brought to the attention of the Committee, and I have pleasure in filing them.

The CHAIRMAN: Mr. Varcoe has been good enough to obtain from the Statistical department some information which has the appearance of being very interesting, based upon the number of bankruptcies, the amounts recovered and distributed. We will file this statement which is called "Commercial Failures in Canada for December 1931 with totals for the calendar year 1931" and he will attach to it a letter dated the 23rd of April from R. H. Coats, Dominion Statistician, giving information on the matters under discussion. Now, gentlemen, I think we have heard all witnesses to be heard. I assume that if somebody, while we are still at work, should discover that he has failed to impart to us some valuable information, possibly we might listen to him for a few minutes, but I know of nobody now.

Mr. SPEAKMAN: Mr. Chairman, the Hon. George Hoadley, Minister of Agriculture in the Alberta government, was present at some of our former meetings but was called away before he had any opportunity to give testimony and he left with me a brief memorandum covering the views of his government upon the Act which were in confirmation of the stand I have already taken in respect of farmers under the Act. I desire to file the memorandum.

The CHAIRMAN: Very well, Mr. Speakman.

The Committee adjourned its hearing.

TRANSLATION OF EVIDENCE SUBMITTED BY Mr. ALDERIC LALONDE, ON APRIL 20

Mr. Alderic Lalonde, of Rigaud, President of the Catholic Union of Farmers of the Province of Quebec, is called.

The Acting Chairman (Mr. MacDonald): Would you indicate the nature of your experience, Mr. Lalonde?

Mr. Lalonde (Translation): I appear here as President of the Union of Farmers. After discussing on different occasions with members of our association certain phases of the Bankruptcy Act, we consider this Act detrimental to the farmer's credit.

By Mr. Dubois:

Q. In the Province of Quebec, particularly?—A. Yes, in the Province of Quebec, particularly, because we live in that province.

The Hon Mr. Lapointe: The witness is not supposed to know anything with respect to other parts of the country.

Mr. Lalonde: The Act is detrimental because lenders having some surplus capital which they could make available in order to help the farmer, are afraid of lending him any money lest the borrower should go into bankruptcy a few days later. It has happened in different places that farmers who had secured loans to meet current liabilities went into bankruptcy afterwards. This is a regrettable situation that instils fear in the minds of people who have money.

On the other hand, I believe this law lends itself to abuses by certain trustees. It is true the law forbids the trustees from urging whomsoever to go into bankruptcy, yet though they may refrain from such a course they have agents who attend to this matter on their behalf. I am advised that in the parish of Saint-Jerome, a trustee's agent in a single day induced five farmers to go into bankruptcy. As a rule, they achieve this result by misleading the farmers and submitting to them that all their debts will be wiped out should they go into bankruptcy. They keep them under this false impression. Owing to the fact that a large number of farmers are not conversant with the law, many are deceived and they discover, after the conclusion of the bankruptcy proceedings, that they are still in debt. The creditors only lose out in the transaction. The trustee is the party who made money.

By the Hon. Mr. Lapointe:

Q. And, in your experience, the farmers who resort to bankruptcy act thus, as a rule, because somebody urges them to do so? They would not do so if this practice did not prevail?—A. I know of no farmer who did take such action of his own volition.

Q. And those who go into bankruptcy do so as a result of this prompting? —A. Yes, only because they are urged to do so.

Q. By parties who want to profit——? A.— ——by the bankruptcy. I will not say the trustees themselves do the soliciting but they send agents to do the work for them. We had a case in Rigaud. This individual would certainly not have paid all the trustee's expenses and, apart from that, made a settlement on the basis of 80 cents on the dollar, had he been acquainted with the law. He could certainly have financed his affairs without resorting to bankruptcy.

Having said this much, we would request the Government to amend this law in such a manner that the farmer may not avail himself of its provisions. Should he reach a point where the burden of his indebtedness becomes too heavy, the sheriff or his creditors will intervene, but he should not be free to go into bankruptcy under the guidance of a trustee. We make this request in

order to protect our farmers and preserve their credit. These represent about all the suggestions I wished to make.

By the Acting Chairman (Mr. Macdonald):

Q. I suppose this is the one feature you wanted to put before the Committee?—A. Yes, sir.

By Mr. Carmichael:

Q. How many farmers are there in your association?—A. 16,000.

Q. Is that the considered view of your organization or your own personal view? (Translation): A. We hold an annual convention to which all farmers are invited to come and discuss agricultural questions and present their viewpoint. Between 1,000 and 1,500 farmers attend this convention each year, and for the past three years we have adopted a resolution requesting the federal authorities to amend this law.

By Hon. Mr. Lapointe:

Q. The resolution carried unanimously?—A. Unanimously.

SESSION 1932

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 41, AN ACT TO AMEND

THE BANKRUPTCY ACT

No. 6

MINUTES OF PROCEEDINGS

AND

FINAL REPORT

Respecting Bills 36 and 41

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1932

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS,

TUESDAY, May 3, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met at 10.30 a.m., the Chairman, Mr. Hackett, presiding.

The following members were present: Messrs. Hackett, MacDonald (*Cape Breton South*), Gobeil, Anderson (*Toronto-High Park*), Kennedy (*Winnipeg South Centre*), Fraser (*Cariboo*), Butcher, Jacobs, Lapointe, Ralston, Speakman, Carmichael, 11.

A letter and memorandum dealing with the proposed amendments to the Bankruptcy Act were read from Mr. F. D. Tolchard, manager, Toronto Board of Trade, and Mr. C. A. Houghty, London, Ont., respectively. These were filed for further consideration.

The Committee then proceeded to the consideration of sections 18, 19, 20, 25, 26, 28, 38, 41 and 47 of the Bill, relating particularly to the appointment of a Superintendent in Bankruptcy, his duties, powers, etc., and to the Licensing of Trustees. Without deciding definitely on each of these clauses in particular, the following motion, moved by Mr. Kennedy, seconded by Mr. Speakman, was carried unanimously:—

Resolved that the Committee approve of the principle of the appointment of a Superintendent in Bankruptcy and the licensing of trustees.

On motion of Mr. Jacobs, the Committee agreed that the matter of drafting a Report for the House be referred to the sub-committee appointed on April 12th, with instructions to report to the Committee at its next meeting.

The Committee adjourned until Friday, May 6th, at 10 a.m.

R. ARSENAULT,
Clerk of the Committee.

HOUSE OF COMMONS,

FRIDAY, May 6, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met this day at 10 a.m. The Chairman, Mr. Hackett presided.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Gobeil, Anderson (*Toronto-High Park*), Kennedy (*Winnipeg South Centre*), Butcher, Jacobs, Speakman, Carmichael, 9.

Mr. Varcoe of the Justice Department also present.

Consideration resumed of the Bill.

Progress reported.

The Committee adjourned to meet at 2 p.m. this day.

AFTERNOON SESSION

The Committee resumed at 2 p.m., Mr. Hackett in the Chair.

Members present: Messrs. Hackett, MacDonald, Gobeil, Kennedy, Fraser, Butcher, Jacobs, Speakman, Carmichael, 9.

Also present: Mr. Varcoe, Justice Department.

Consideration resumed of the Bill and of the amendments suggested thereto.

Progress reported.

The Committee adjourned at 3.45 until Tuesday, May 10, at 10 a.m.

R. ARSENAULT,
Clerk of the Committee.

HOUSE OF COMMONS,

TUESDAY, May 10, 1932.

The Special Committee appointed to consider Bill No. 41, An Act to amend The Bankruptcy Act met at 10 a.m., the Chairman, Mr. Hackett, presiding.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Gobeil, Anderson (*Toronto-High Park*), Kennedy (*Winnipeg South Centre*), Fraser (*Cariboo*), Butcher, Jacobs, Lapointe, Speakman, Carmichael, 11.

Mr. Varcoe of the Justice Department was also present.

The Committee resumed consideration of Bill No. 41.

Progress reported.

The Committee adjourned at 12.30 until 2 p.m.

AFTERNOON SESSION

The Committee resumed at 2 p.m., Mr. Hackett presiding.

Members present: Messrs. Hackett, MacDonald, Anderson, Kennedy, Perley (*Qu'Appelle*), Fraser, Butcher, Jacobs, Carmichael, 9.

Mr. Varcoe of the Justice Department also present.

The Committee having resumed consideration of the remaining clauses of Bill 41 and having unanimously agreed upon the different amendments made to said Bill, ordered that same be reprinted as amended.

The Committee then took into consideration Bill No. 36, An Act to amend the Bankruptcy Act (Locality of the Debtor), referred to them by the House on April 19, 1932, and agreed unanimously to report to the House recommending that said Bill No. 36 be not proceeded with at this Session.

The Committee adjourned until 2 p.m. to-morrow, Wednesday, in order to go over Bill No. 41 as reprinted.

R. ARSENAULT,
Clerk of the Committee.

HOUSE OF COMMONS,

WEDNESDAY, May 11, 1932.

The Special Committee on Bill No. 41, An Act to amend the Bankruptcy Act, met this day at 2 p.m. The Chairman, Mr. Hackett presided.

Members present: Messrs. Hackett, MacDonald (*Cape Breton South*), Gobeil, Anderson (*Toronto-High Park*), Kennedy (*Winnipeg South Centre*), Fraser (*Cariboo*), Butcher, Elliott, Jacobs, Carmichael, 10.

Also present: Mr. F. P. Varcoe, Department of Justice.

The Committee having been supplied with copies of Bill No. 41, as reprinted in accordance with instructions given at their previous sitting, said reprinted Bill was read and compared with the original Bill and amendments made thereto, and after a few other amendments had been made, the Chairman was authorized, by unanimous consent, to report the Bill to the House as amended by the Committee.

Copy of a draft report submitted by the Chairman was also agreed upon by unanimous consent, said report to be presented to the House by the Chairman when reporting the Bill.

The Committee then adjourned *sine die*.

R. ARSENAULT,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

SECOND REPORT

FRIDAY, May 13, 1932.

The Special Committee appointed to consider Bill No. 41, An Act to amend the Bankruptcy Act, beg leave to present the following as their Second Report:—

Your Committee have considered Bill No. 41, An Act to amend the Bankruptcy Act, and have unanimously agreed to report said Bill with amendments.

In the course of their proceedings, your Committee have ordered that said Bill No. 41 be reprinted as amended.

All of which is respectfully submitted.

JOHN T. HACKETT,
Chairman.

THIRD REPORT

FRIDAY, May 13, 1932.

The Special Committee appointed to consider Bill No. 41, An Act to amend the Bankruptcy Act, beg leave to present the following as their Third and Final Report:—

Fourteen meetings of the Committee have been held and eighteen persons from all parts of Canada have appeared and given evidence. Written communications have been received from a very large number of persons. In addition, documents to the number of twenty-four have been filed.

The appointment of a Superintendent in Bankruptcy and the licensing of trustees are the principal changes introduced by the Bill. The witnesses were almost unanimous in favour of the supervision provided by the Bill, believing it necessary to eliminate existing abuses. Some suggested that the expense of this supervision be borne by the Government. Your Committee unanimously recommend the appointment of a Superintendent and the licensing of trustees, the expense to be borne by an assessment on the gross assets of bankrupt estates, and consider that a levy not exceeding one half of one per cent, possibly less, will defray the expense of this supervision.

Witnesses representing agricultural interests in the Province of Quebec were unanimously in favour of excluding Quebec farmers from the operation of the Act. Your Committee have agreed to recommend that the Act be so amended.

A copy of the proceedings and evidence adduced before the Committee is appended hereto for the information of the House.

All of which is respectfully submitted.

JOHN T. HACKETT,
Chairman.

FOURTH REPORT

TUESDAY, May 17, 1932.

The Special Committee to whom was referred Bill No. 36, An Act to amend the Bankruptcy Act (Locality of the Debtor) have the honour to present the following as their Fourth Report:—

Your Committee have considered Bill No. 36, An Act to amend the Bankruptcy Act (Locality of the Debtor), and have unanimously agreed to recommend that said Bill be not proceeded with at this Session of Parliament.

All of which is respectfully submitted.

JOHN T. HACKETT,
Chairman.


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